

Record of: Jeeyoung A Sung  
Penn ID: 27714958  
Date of Birth: 20-JAN  
Date Issued: 21-MAY-2023

The University of Pennsylvania

U N O F F I C I A L

Page: 1

Level:Law

Primary Program

Program: Juris Doctor  
Division : Law  
Major : Law

SUBJ NO.	COURSE TITLE	SH GRD	R	SUBJ NO.	COURSE TITLE	SH GRD	R
INSTITUTION CREDIT:				Institution Information continued:			
Fall 2021				LAW 6170	Conflict of Laws (Roosevelt)	3.00 B+	
Law				LAW 6310	Evidence (Mayson)	4.00 A-	
LAW 500	Civil Procedure (Wang) - Sec 3	4.00 A		LAW 6740	Constitutional Litigation	4.00 A-	
LAW 502	Contracts (Hoffman) - Sec 3	4.00 A			(Kreimer)		
LAW 504	Torts (Delisle) - Sec 3A	4.00 A		LAW 6960	Constitutional Criminal	3.00 A-	
LAW 510	Legal Practice Skills (Gowen)	4.00 H			Procedure (Rudovsky)		
LAW 512	Legal Practice Skills Cohort	0.00 CR		LAW 8020	Law Review - Associate Editor	1.00 CR	I
	(Lee)				Ehrs: 15.00		
Ehrs: 16.00				Spring 2023			
Spring 2022				Law			
LAW 501	Constitutional Law (Kreimer)	4.00 A		LAW 7230	Federal Indian Law (Struve)	3.00 A	
	- Sec 3A			LAW 7430	Complex Litigation	3.00 A-	
LAW 503	Criminal Law (Ossei-Owusu) -	4.00 B+			(Scirica/Duncan)		
	Sec 3			LAW 8020	Law Review - Associate Editor	0.00 CR	I
LAW 510	Legal Practice Skills (Gowen)	2.00 H		LAW 9070	State Constitutional Law	3.00 A	
LAW 512	Legal Practice Skills Cohort	0.00 CR			(Becker)		
	(Lee)			LAW 9990	Independent Study (Roosevelt)	3.00 A	I
LAW 601	Administrative Law - 11 (Lee)	3.00 A-		LAW 9990	Teaching Assistant (Lee)	2.00 CR	I
LAW 628	Plagues, Pandemics, and	3.00 A			Ehrs: 14.00		
	Public Health Law (Feldman)			***** TRANSCRIPT TOTALS *****			
Ehrs: 16.00				Earned Hrs			
Fall 2022				TOTAL INSTITUTION			
Law				61.00			
***** CONTINUED ON NEXT COLUMN *****				TOTAL TRANSFER			
				0.00			
				OVERALL			
				61.00			
				***** Comments *****			
				Senior Writing Requirement - fulfilled through			
				Independent Study (Roosevelt);			
				***** END OF TRANSCRIPT *****			

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

June 10, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Re: Clerkship Applicant Jeeyoung Sung

Dear Judge Walker:

I write to recommend Jeeyoung Anes Sung, who goes by Anes, for a clerkship in your Chambers. I taught Anes in Contracts last year, and like most of my faculty colleagues, I gave her an "A." She then worked for me over the Spring and Summer as a research assistant for several articles about eviction law and policy. She's an extraordinary student and will be a terrific clerk.

I will focus on my research experiences with her. I asked Anes to gather information about the relationship between deficits in access to public transit and various social ills. Her work was impeccable: she delivered thorough, timely, well-written summaries of dozens of articles. I never had to explain an assignment twice, nor worry about whether she'd get it in on time. In twenty years as a professor, I've rarely if ever had such excellent research assistance. The resulting paper, published in the Proceedings of the National Academy of Sciences, was immeasurably improved by her work.

Having had so much success with the transit project, I next tasked her to gather for me information about the history of the statute of frauds for another paper. Again, Anes produced extremely cogent and well-written work, on quite short timelines. It was a decided loss for my research productivity when she moved on to work for Prof. Lee as a teaching assistant, and also rose to become the executive editor of the law review!

Overall, Anes will be an ideal clerk. You can trust her to tell you what the law is, at incredible speed, and her writing is sharp. I recommend her enthusiastically.

Respectfully yours,

David A. Hoffman  
dhoffman@law.upenn.edu  
215-510-096

David Hoffman - dhoffma1@law.upenn.edu

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

June 10, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Re: Clerkship Applicant Jeeyoung Sung

Dear Judge Walker:

I am delighted to write you in support of Anes Sung's application for a clerkship in your chamber. Anes was a student in my Conflict of Laws class in the fall of 2022. She was a very strong class participant and demonstrated an excellent grasp of some very difficult material. I was a little disappointed when I got my decoded grade sheet back and saw that I'd given her a B+ on the exam—disappointed in myself, in that I don't think the exam worked very well. (I also gave a B+ to the student who last spring scored highest on my constitutional law exam, so I have some indications that it wasn't measuring very well.) I was happy that Anes wanted to pursue an independent study with me this spring, because I looked forward to seeing what she could do in terms of research and writing.

To say I was not disappointed with her work on the independent study would be an understatement. She wrote about some of the choice-of-law issues raised by same-sex marriage—first the Defense of Marriage Act and then the Respect for Marriage Act. She analyzed these statutes as part of a broader clash of values and explored the tensions and connections between choice-of-law values and the process of social change. The paper, which I expect will be published as a Comment by our law review, was far more sophisticated and thoughtful than the student work I'm used to seeing, and it was beautifully written to boot. Anes is not only a strong analytical thinker but a gifted stylist as well. I think she would be an extraordinary clerk and an asset to any chambers. I recommend her with great enthusiasm. Please do not hesitate to contact me if I can be of any further assistance.

Sincerely,

Kermit Roosevelt  
David Berger Professor for the  
Administration of Justice  
Tel.: 215.746.8775  
E-mail: krooseve@law.upenn.edu

Kermit Roosevelt - krooseve@law.upenn.edu - 215-746-8775

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

June 10, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Re: Clerkship Applicant Jeeyoung Sung

Dear Judge Walker:

Jeeyoung (Anes) Sung is an unusually talented writer and strong legal analyst. Well-organized, precise, hardworking, and responsible she will make an excellent clerk. Even-keeled and low-key yet upbeat, she will be a welcome addition to chambers. A well-cultured lover of art, opera, and chamber music with the stamina of a former fifth-grade teacher, she has a welcome mix of energy and poise. I recommend her to you for a clerkship with utmost enthusiasm.

Anes is an exceptionally skilled legal writer and an able legal analyst. She excelled in Administrative Law, earning a high A- despite it being a challenging course, especially for first-year students such as Anes. I design my exam to mirror real world assignments: it is a word-limited, 24-hour take home. Excelling requires not only spotting and analyzing issues well, but also demonstrating excellent writing and sound judgment as to which issues to focus on and at what depth. Students must engage in nuanced analysis and navigate factual and doctrinal complexity. Anes wrote a strong exam, spotting all issues and earning my top marks on several. Her exam was sufficiently impressive that she was one of only four (out of over 100) students whom I asked to serve as a teaching assistant in my 2023 Administrative Law class. I was not disappointed. She was an excellent TA, providing high quality work, whether drafting class notes or hypotheticals for the students' weekly quizzes. Anes proved equally adept at oral communication and thinking on her feet, earning my top marks when cold called.

Anes's skill and versatility as a writer is especially remarkable. I noted in my records that hers was a "very well-written exam, with great, efficient statements of legal tests." Indeed, I awarded her extra points for her excellent arguments and high-quality legal writing. Anes is a versatile writer as well. She earned an A+ on my exam's persuasive essay component. I noted that her analysis of the Supreme Court's recent separation of powers jurisprudence was the "most original" I'd seen. Anes can translate complex law into direct, accessible prose. I gave my first-year students the option of writing an essay on a recent regulation. Anes was one of only a few who took up that challenge. Her essay was on par with the very best written by the over 40 students in my upper-level section of Administrative Law. I was so impressed that I nominated her essay for publication by the Regulatory Review, Penn Carey Law's widely read online source of regulatory news, analysis, and opinion.

Anes's talents have been recognized by my colleagues and her peers. She has done very well in law school. She earned straight As her first semester of law school. We impose a mandatory curve, making this a rare achievement. Since then, she has continued to do very well, earning an A- average overall. Her peers on our Law Review recognized her ability in selecting her as an Executive Editor. My colleagues in our Legal Practice Skills program acknowledged her strong writing skills, great professionalism, and kind and steady personality when they chose her to serve as a Littleton Fellow during her third year of law school. This highly sought after honor means she will help mentor and teach a cohort of first-year students. All these qualities and talents will serve her well in a clerkship.

Anes is a well-rounded and compelling applicant as well. Anes's family immigrated to the United States from South Korea when she was four. She attributes her love of language and writing in part to her experience mastering English as a second language. A serious violinist who played in the orchestra while an undergraduate at Harvard, she now fulfills her love for music as an audience member. Anes taught fifth grade in New Mexico before joining law school, which may help explain her calm, competent demeanor.

An extraordinarily talented writer and strong legal analyst, Anes will be an excellent clerk. Tremendously humble, grateful, and kind, she will get along easily with others in chambers. With plans to be an appellate litigator, she will be gratifying to mentor. I recommend her to you for a clerkship with utmost enthusiasm.

Sincerely,

Sophia Z. Lee  
Professor of Law  
Tel.: (215) 573-7790  
E-mail: [slee@law.upenn.edu](mailto:slee@law.upenn.edu)

Sophia Lee - [slee@law.upenn.edu](mailto:slee@law.upenn.edu) - 215-573-7790

**Jeeyoung Anes Sung**

2014 Walnut Street, Apt. 100, Philadelphia, PA 19103  
anessung@pennlaw.upenn.edu ♦ (480) 310-0932

**WRITING SAMPLE**

The attached writing sample is the Comment I wrote to satisfy both the *University of Pennsylvania Law Review*'s requirements for its editors and the University of Pennsylvania Carey Law School's Senior Writing Requirement. The *Law Review* advised that Comments be between 10,000 and 15,000 words and contain at least 100 footnotes. This Comment is the result of entirely independent research, analysis, and writing; it has not been edited by anyone else.

Part I has been omitted. All other parts of the Comment are enclosed.

# MAKING IT WORK: RECONCILING CHOICE-OF-LAW VALUES AND SOCIAL CHANGE IN SAME-SEX MARRIAGE

J. Anes Sung

## INTRODUCTION

Marriage takes work. The onuses of commitment aside,<sup>1</sup> marital status makes up a meaningful fraction of individuals' interactions with the systems of governance defining their rights.<sup>2</sup> While in many respects marriage is an intimate relationship between individuals, it is also a public institution that allows the surrounding governing body to regulate reproduction, families, and communities within its borders.<sup>3</sup> The individuals within and implicated by marriage must therefore navigate a web of laws, norms, responsibilities, and rituals that may collectively define the ethos of the state exercising authority over them.<sup>4</sup>

It is no wonder, then, that states have claimed such a strong interest in regulating the legal relationships within their borders<sup>5</sup> and put so much into defending them. "From the earliest days of the Republic . . . family law has unquestionably belonged to the states."<sup>6</sup> But states' authority over marriage within their borders has since diminished.<sup>7</sup> While this diminishment may be attributed to a number of factors,<sup>8</sup> the federal regulation of same-sex marriage<sup>9</sup> undeniably constitutes a significant feature of it.

The emergence of same-sex marriage as a legal possibility in the late 90s roused concerns from the public, legislators, and academics that states would lose autonomy over which pairings of its citizens can validly be married. Namely, states that would not recognize same-sex marriage performed within its own borders wondered whether they would be compelled to recognize same-sex marriages validly performed out of state.<sup>10</sup>

<sup>1</sup> See WILLIAM SHAKESPEARE, 1 HENRY VI act 5, sc. 3, ll. 62-65 ("For what is wedlock forced but a hell, / An age of discord and continual strife? / Whereas the contrary bringeth bliss, / And is a pattern of celestial peace.").

<sup>2</sup> Marital status informs adoption, custody, medical decisionmaking, taxation, inheritance, survivors' benefits, health insurance, Social Security, and criminal sanctions, to name a few. See *United States v. Windsor*, 570 U.S. 744, 776 (2013); *Obergefell v. Hodges*, 576 U.S. 644, 670 (2015).

<sup>3</sup> See generally Maggie Gallagher, *What Is Marriage For? The Public Purposes of Marriage Law*, 62 LA. L. REV. 773 (2002) (surveying perspectives about marriage as both private and public relationships).

<sup>4</sup> See generally Elizabeth S. Scott, *Social Norms and the Legal Regulation of Marriage*, 86 VA. L. REV. 1901 (2000) (arguing that marriage can be described as a bundle of social norms).

<sup>5</sup> See Brian H. Bix, *State of the Union: The States' Interest in the Marital Status of Their Citizens*, 55 MIAMI L. REV. 1, 6-14 (2000) (identifying states' direct and indirect interests in marriage).

<sup>6</sup> See Anne C. Dailey, *Federalism and Families*, 143 U. PA. L. REV. 1787, 1821 (1995); cf. Jill Elaine Hasday, *Federalism and the Family Reconstructed*, 45 UCLA L. REV. 1297, 1297 (1998) ("The family serves as the quintessential symbol of localism."); *United States v. Lopez*, 514 U.S. 549 (1995) (holding several times that the Commerce Clause power does not reach family law).

<sup>7</sup> Hasday, *supra* note 6, at 1319-69 (tracing the post-Reconstruction era history of the federal assertion of authority over family law).

<sup>8</sup> *Id.*

<sup>9</sup> Throughout this Comment, I refer only to "same-sex" marriage," "gay rights," and "gay and lesbian" people. Because the relevant movements—both social and legal—considered only cisgender gay and lesbian relationships, use of these terms is meant to be specific to the scope of the debate rather than exclusive of members of the LGBTQ+ community often overlooked. See Katie Eyer, *Transgender Constitutional Law*, 171 U. PA. L. REV. (forthcoming 2023) (manuscript at 76-79) (on file with author) (pointing out that nonbinary, genderfluid, and other gender-nonconforming individuals are often left out of the goals of sexuality-related civil rights impact litigation).

<sup>10</sup> We will see that this fear was largely reactionary and ultimately unfounded. See *infra* subsection II.B.

This presents the paradigmatic choice-of-law question: when the laws of two states exercising regulatory authority conflict, which state's law should govern?<sup>11</sup> Despite existing doctrine designed to resolve this question between the states themselves,<sup>12</sup> the strong moral opinions, political positions, and social movements around same-sex marriage prompted an attempt at the federal level to answer the question through legislation.

Such legislation first came in 1996 in the form of the Defense of Marriage Act (DOMA),<sup>13</sup> which in part permitted states to refuse to recognize same-sex marriages validly performed out of state. In 2022, new legislation, the Respect for Marriage Act (RFMA),<sup>14</sup> formally repealed DOMA and prohibited states from refusing to recognize same-sex marriages validly performed out of state. Both were exercises of Congress's authority under the Effects Clause, and both purported to settle the choice-of-law issue.<sup>15</sup>

Then, after commentators debated at length questions about how same-sex marriage fit, did not fit, or should fit into choice-of-law doctrine,<sup>16</sup> the Supreme Court handed down *Lawrence v. Texas*,<sup>17</sup> *United States v. Windsor*,<sup>18</sup> and *Obergefell v. Hodges*.<sup>19</sup> In doing so, the Court circumscribed choice of law by finding that states must permit same-sex couples in their respective jurisdictions to marry on substantive due process and equal protection grounds. It isn't surprising that gay-rights advocates would fight for recognition of fundamental rights and impermissible discrimination rather than lobby Congress to make certain favorable choice-of-law rules; they were, after all, in part fighting a moral battle in addition to a legal one.<sup>20</sup> But while this result was a victory for broader social change, the choice-of-law queries went unanswered.

<sup>11</sup> Paradigmatic, perhaps, but also simplified. See Larry Kramer, *Rethinking Choice of Law*, 90 COLUM. L. REV. 277, 280-81 (1990) (describing the choice-of-law question in multistate cases as a two-step process, first asking whether there is in fact a conflict of laws and, if so, then resolving this "true conflict"); KERMIT ROOSEVELT III, CONFLICT OF LAWS 1-2 (2022) (breaking down the choice-of-law analysis into two steps: determining scope and then, if necessary, priority). The answer to this question with respect to same-sex marriage recognition has been visited repeatedly. See, e.g., Note, *In Sickness and in Health, in Hawaii and Where Else?: Conflict of Laws and Recognition of Same-Sex Marriage*, 109 HARV. L. REV. 2038 (1996); Joseph W. Hovermill, *A Conflict of Laws and Morals: The Choice of Law Implications of Hawaii's Recognition of Same-Sex Marriages*, 53 MD. L. REV. 450 (1994); Brian H. Bix, *State Interests in Marriage, Interstate Recognition, and Choice of Law*, 38 CREIGHTON L. REV. 337 (2005); Barbara J. Cox, *Same-Sex Marriage and Choice-of-Law: If We Marry in Hawaii, Are We Still Married When We Return Home?*, 1994 WIS. L. REV. 1033; Scott Fruehwald, *Choice of Law and Same-Sex Marriage*, 51 FLA. L. REV. 799 (1999); Andrew Koppelman, *Same-Sex Marriage, Choice of Law, and Public Policy*, 76 TEX. L. REV. 921 (1998); Larry Kramer, *Same-Sex Marriage, Conflict of Laws, and the Unconstitutional Public Policy Exception*, 106 YALE L.J. 1965 (1997); Linda Silberman, *Same-Sex Marriage: Refining the Conflict of Laws Analysis*, 153 U. PA. L. REV. 2195 (2005).

<sup>12</sup> See *infra* subsection II.B.

<sup>13</sup> Defense of Marriage Act, Pub. L. 104-199, 110 Stat. 2419 (1996), *repealed by* Respect for Marriage Act, Pub. L. 117-228, 136 Stat. 2305 (2022).

<sup>14</sup> Respect for Marriage Act, Pub. L. 117-228, 136 Stat. 2305 (2022).

<sup>15</sup> H.R. REP. NO. 104-664, at 27 (1996) ("Section 2 [of DOMA] does mean that the Full Faith and Credit Clause will play no role in [a state's] choice of law determination, thereby improving the ability of various States to resist recognizing same-sex 'marriages' celebrated elsewhere. This, the Effects Clause plainly authorizes Congress to do."); Respect for Marriage Act, Pub. L. 117-228, § 4, 136 Stat. 2305 (2022) (assuring "full faith and credit to any public act, record, or judicial proceeding of any other State pertaining to a marriage between 2 individuals, on the basis of the sex . . . of those individuals").

<sup>16</sup> See *infra* notes 154-64.

<sup>17</sup> 539 U.S. 558 (2003).

<sup>18</sup> 570 U.S. 744 (2013).

<sup>19</sup> 576 U.S. 644 (2015).

<sup>20</sup> See Charles J. Butler, *Defense of Marriage Act: Congress's Use of Narrative in the Debate Over Same-Sex Marriage*, 73 N.Y.U. L. REV. 841, 872-78 (1998) (arguing that a prominent narrative opponents of same-sex marriage employed was that gay and lesbian people and relationships were inherently immoral and perverse).

So why consider choice of law at all? “Choice of law arbitrates values.”<sup>21</sup> A court’s decision as to whose law should govern is ultimately a judgment on which state’s values—and which party’s rights—are given priority.<sup>22</sup> While choice-of-law analyses are not being conducted in the courts today regarding same-sex marriage recognition post *Windsor* and *Obergefell*, the newness of RFMA as federal social policy and as contributing to the choice-of-law regime with respect to marriage makes these inquiries particularly apposite.<sup>23</sup> More broadly, engaging with the underlying choice-of-law system allows us to examine which state’s values are given priority, how choice-of-law values inform that order, the relationship between state interests and federal authority, and how or whether existing choice-of-law regimes can accommodate the desire to achieve social change on a national scale.

And so, this Comment attempts to pursue these inquiries.<sup>24</sup> At a high level, this Comment considers the effects and implications of federal legislation over an institution traditionally regulated and resolved by the states. More narrowly, this Comment asks how both DOMA and RFMA impacted the existing choice-of-law regime with respect to marriage at the state level. How did DOMA and RFMA fit into, disrupt, or affirm these existing paradigms? What are the implications of these assertions of federal authority for state autonomy? How do these two laws compare in advancing desirable choice-of-law values? And what role do they play in the battlegrounds of this politically and socially consequential subject?

Part I recounts the history leading up to DOMA and then the change in tides at the turn of the millennium through *Lawrence*, *Windsor*, *Obergefell*, and RFMA. The abbreviated account is set out for a few reasons. First, it provides context for how the choice-of-law debate around same-sex marriage—especially regarding Full Faith and Credit—even began. Second, it tracks the changing same-sex marriage regimes set by legislatures and courts at both the state and federal levels, allowing us to see which choice-of-law regime was operating at a given time. And finally,

<sup>21</sup> Scott Fruehwald, *Choice of Law and Same-Sex Marriage*, 51 FLA. L. REV. 799, 799 (1999); see also Koppelman, *supra* note 11, at 926-27.

<sup>22</sup> Choice-of-law rules determine parties’ rights. See generally Kermit Roosevelt III, *The Myth of Choice of Law: Rethinking Conflicts*, 97 MICH. L. REV. 2448 (1999) (describing choice-of-law regimes as being relative to rights); Larry Kramer, *Rethinking Choice of Law*, 90 COLUM. L. REV. 277 (1990) (contemplating a rights-based approach to choice of law); Lea Brilmayer, *Rights, Fairness, and Choice of Law*, 98 YALE L.J. 1277 (1989) (same); Perry Dane, *Vested Rights, “Vestedness,” and Choice of Law*, 96 YALE L.J. 1191 (1987) (same).

<sup>23</sup> Those who fear the reversal of *Obergefell* following *Dobbs v. Jackson Women’s Health*, 142 S. Ct. 2228 (2022), may also find it urgent to understand the underlying rules. See James Essecks, *Here’s What You Need to Know About the Respect for Marriage Act*, ACLU (July 21, 2022), <https://www.aclu.org/news/lgbtq-rights/what-you-need-to-know-about-the-respect-for-marriage-act>.

<sup>24</sup> A note on what this Comment does *not* attempt to do: This Comment excludes major discussion about the incidents of marriage, the differences between migratory and evasive marriages, other matters of family law, and substantive due process and equal protection. These topics are without a doubt inevitable contingencies of the topic of marriage—and they do appear somewhat as relevant—but for purposes of narrowing in on the tension between local and national policy, these are outside the scope of the Comment. For the same reasons, the Comment largely also excludes analysis of states’ “mini-DOMA” statutes. This Comment, importantly, does not question the dignity, value, or desirability of same-sex and queer couples and marital unions. Nor does it ask whether same-sex or queer couples should be allowed within certain jurisdictions at all. In excavating the choice-of-law systems that have inhered in the same-sex marriage landscape over the years, I ask the “proper question,” as advanced by Professor Wolff: “[G]iven that gay couples from other states may relocate and move freely within the jurisdiction, does it make sense to give no effect to their validly celebrated marriages, with all the attendant disruption to property interests, custodial arrangements, and long-term planning that such a refusal will entail? Or does it make more sense to give effect to those relationships in ways that preserve reasonable expectations and avoid hardship, even when doing so diverges from the choices that the local jurisdiction has made about the options available to its own domiciliaries?” See Tobias Barrington Wolff, *Interest Analysis in Interjurisdictional Marriage Disputes*, 153 U. PA. L. REV. 2215, 2249 (2005).



this history lays out the stakes: caught between the political infighting and doctrinal debates are the rights that will govern the very real lives of same-sex couples.

Part II then asks: What did DOMA and RFMA actually do as choice-of-law rules and in what ways did or didn't they settle the choice-of-law issue? I start by considering what a choice-of-law system should ideally do. What are the desirable qualities of a rights-allocating scheme, especially in the context of marriage and domestic relations? Then, I examine the traditional choice-of-law rules for marriage as a "control" against which I track DOMA and RFMA as variables to that standard. I will revisit the Full Faith and Credit debate from which DOMA emerged, the force of the domicile and place of celebration under each statute, and the statutes' impacts on federalism. The goal of this Part is to determine which regime produced the better choice of law and, in doing so, to peel away the constitutional holdings that have obfuscated DOMA and especially RFMA as choice-of-law regimes.

Finally, Part III contemplates the larger political and social context in which choice of law operates. Having compared the desirability of DOMA and RFMA as choice-of-law regimes, I attempt to reconcile them with movements for social change on a national level, the values of which do not always align with those of choice of law.

## I. SAME-SEX MARRIAGE: LITIGATION AND LEGISLATION

*[Part I and footnotes 25-100 omitted.]*

## II. CHOICE OF LAW IN THE SAME-SEX MARRIAGE STORY

The politics and litigation around same-sex marriage has added substantial new texture to the underlying choice-of-law landscape with respect to marriage. As we will see, traditional marriage recognition rules have persisted through the First and Second Restatements—analytical regimes that are otherwise quite distinct. This underlying infrastructure remains largely intact, but within the particular context of same-sex marriage, federal constitutional and statutory provisions now play uniquely significant roles.

In this Part, I examine three same-sex marriage choice-of-law regimes: the traditional rule, DOMA, and RFMA. The traditional rule sets the "control"—the existing set of underlying rules. I then treat DOMA and RFMA as "variables" altering that existing structure and assess how each as independent choice-of-law regimes does or does not advance desirable choice-of-law values.

### A. Choice-of-Law Desiderata

This project requires defining at the outset what exactly makes a good choice-of-law system. The history of choice-of-law doctrine will show how widely this pendulum has swung,<sup>101</sup> but a determination of ambitions for a workable choice-of-law system will do well to orient us.

The matrix of desirable choice-of-law values has arguably remained relatively stable, though the level of priority given to any one set may have changed over time. In the traditional vested-rights approach, the "right" answer was inherent and inevitable to the conduct or transaction, so systemic factors like certainty, predictability, administrability, and uniformity were easily met, while considerations of states' policies, interests, and fairness were essentially irrelevant. The

<sup>101</sup> For histories of the doctrinal development of American choice of law, see Roosevelt, *supra* note 22, at 2454-71; Brilmayer, *supra* note 22, at 1281-85; Kramer, *supra* note 22.

Second Restatement, on the other hand, aimed to thoroughly consider these factors and was thus more likely to produce a sensible result, but often at the expense of practical concerns. Professor Roosevelt has categorized these, aptly, as “systemic” and “right-answer” factors.<sup>102</sup>

Systemic factors are relatively easy to identify. Predictability, administrability, and uniformity are concerned with how the outcome of a choice-of-law analysis is determined.<sup>103</sup> Choice of law is not simply an intellectual puzzle for scholars and students; it is a legal analysis that courts and parties must be able to understand and apply. Systemic factors are crucial to a workable choice-of-law regime.

Right-answer factors are more complicated. For a long time, the right answer depended on the assumption that states have a greater interest in protecting their own citizens than those from out of state.<sup>104</sup> This premise of interest analysis has since been critiqued thoroughly on a number of bases.<sup>105</sup> But in family law, and particularly in marriage, the “state to which one belongs”<sup>106</sup> almost certainly has an exclusively internal interest. The basis for a state’s interest in the marital status of citizens within its borders is precisely that the married couple, the couple’s familial choices, and the community they make up will all largely exist within that state’s borders.

Further, state interests with respect to historically “disfavored” marriages (including miscegenation, incest, marriages involving minors, and same-sex marriage) have traditionally been explicitly protective of what happens within those states’ borders.<sup>107</sup> While states could not claim these as legitimate interests today under *Lawrence*, *Windsor*, and *Obergefell*, in their absence, states that would have otherwise opposed same-sex marriage would have likely continued asserting them as interests that should be vindicated.

In marriage, then, right-answer factors are less about competing interests between two states and more about how a selfish state should prioritize its interests against individuals who wish to resist them with rights granted elsewhere. Many right-answer factors are captured by section 6(2) of the Second Restatement:

- (a) the needs of the interstate and international systems;
- (b) the relevant policies of the forum;
- (c) the relevant policies of other interested states and the relative interests of those states in the determination of a particular issue;
- (d) the protection of justified expectations;
- (e) the basic policies underlying the particular field of law . . . .<sup>108</sup>

These factors altogether attempt to accommodate and maximize the realization of relevant state policies and fairness to parties. The demands of Second-Restatement analysis are perhaps

<sup>102</sup> ROOSEVELT, *supra* note 11, at 31.

<sup>103</sup> *Id.* at 32.

<sup>104</sup> This is the premise of Professor Currie’s interest analysis. *See generally* Brainerd Currie, *Married Women’s Contracts: A Study in Conflict-of-Laws Method*, 25 U. CHI. L. REV. 227 (1958).

<sup>105</sup> *See, e.g.,* Lea Brilmayer, *Interest Analysis and the Myth of Legislative Intent*, 78 MICH. L. REV. 392 (1980).

<sup>106</sup> BRAINERD CURRIE, *SELECTED ESSAYS ON THE CONFLICT OF LAWS* 83, 86, 103, 141 n.53 (1963).

<sup>107</sup> Some of these interests include “a desire to exclude certain sexual couplings or romantic relationships entirely from their borders,” “a desire to express the moral disapproval with which the state regards the disputed relationship,” and “a desire to dissuade couples in the disfavored relationship from migrating to the state in the first place.” Wolff, *supra* note 24, at 2216.

<sup>108</sup> RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 6(2).

“indigestible” and “dizzying,”<sup>109</sup> but an earnest application would arguably produce results that both hold states to their word about the priority of their interests and are constitutionally sound.<sup>110</sup>

Finally, because we are interested in the relationship between federal legislation and local policy, we should consider whether federalism should be an ideal worth maximizing.<sup>111</sup> The Supreme Court has long held that family law is an area definitively for the states—rather than for Congress—to regulate.<sup>112</sup> On one hand, state autonomy is exactly what gay-rights advocates fought against. Federally recognized rights were an obvious end point in the same-sex marriage fight, since federalism’s respect for state autonomy has the potential to shield socially regressive policies.<sup>113</sup> And if a public policy exception would be a basis to always apply forum law when it came to marriage recognition, such a forum-preference rule seems inconsistent with horizontal federalism as well.<sup>114</sup> But on the other, perhaps the “whiffs of federalism” wafting through *Windsor*<sup>115</sup> improperly permitted the federal government to impose a national policy that would compete with and ultimately undermine states’ policies.<sup>116</sup> Preservation of state autonomy and sovereignty, after all, advances minority rule and “promotes choice, competition, participation, experimentation, and the diffusion of power.”<sup>117</sup>

Ultimately, federalism as a desirable choice-of-law value seems consistent with the goals of modern choice of law. Like choice of law, federalism is a system of authority allocation in and of itself.<sup>118</sup> And federalism, too, seeks to preserve individual states’ interests, honor their policies, and arguably even ensure fairness.<sup>119</sup> As long as American choice of law must function within a federalist system, repudiating federalism as a choice-of-law value worth pursuing leads to decisions like *Obergefell*, which “solved” the choice-of-law problem simply by eliminating the possibility of interstate conflict rather than by establishing a system that would sensibly and

<sup>109</sup> Roosevelt, *supra* note 22, 2466.

<sup>110</sup> *Id.* at 2466 n.95, 2533-34.

<sup>111</sup> Some scholars very much think so. See, e.g., Jennifer Gerarda Brown, *Competitive Federalism and the Legislative Incentives to Recognize Same-Sex Marriage*, 68 S. CAL. L. REV. 745 (1995) (arguing that maintaining federalism would advance Hawaii’s tourism revenue, since couples would flock to be married there).

<sup>112</sup> See *supra* note 6.

<sup>113</sup> Laurence H. Tribe & Joshua Matz, *An Ephemeral Moment: Minimalism, Equality, and Federalism in the Struggle for Same-Sex Marriage Rights*, 27 N.Y.U. REV. L. & SOC. CHANGE 199, 211 (2013).

<sup>114</sup> It may also be unconstitutional. See Kramer, *supra* note 11, at 1976-97. But see *Nevada v. Hall*, 440 U.S. 410, 422 (1979) (“[T]he Full Faith and Credit Clause does not require a State to apply another State’s law in violation of its own legitimate public policy.”).

<sup>115</sup> See *United States v. Windsor*, 570 U.S. 744, 817 (2013) (Alito, J., dissenting); *id.* at 794 (Scalia, J., dissenting) (deriding the majority’s employment of “amorphous federalism”). But see *id.* at 768 (Kennedy, J.) (“[I]t is unnecessary to decide whether this federal intrusion on state power is a violation of the Constitution because it disrupts the federal balance. The State’s power in defining the marital relation is of central relevance in this case quite apart from principles of federalism.”).

<sup>116</sup> See generally Brief of Federalism Scholars as Amici Curiae in Support of Respondent Windsor, *United States v. Windsor*, 570 U.S. 744 (2013) (No. 12-307).

<sup>117</sup> Heather K. Gerken, *Federalism All the Way Down*, 124 HARV. L. REV. 4, 6 (2010).

<sup>118</sup> Larry Kramer, *Understanding Federalism*, 47 VAND. L. REV. 1485, 1498, 1514 (1994).

<sup>119</sup> That choice of law is constrained by due process is undeniable. See *Allstate Ins. Co. v. Hague*, 449 U.S. 302 (1981) (holding that a state’s choice of law must be “neither arbitrary nor fundamentally unfair”). But whether due process has anything to do with federalism is unsettled. See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 294 (1980) (“[T]he Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment.”); Lea Brilmayer, *Interstate Federalism*, 1987 B.Y.U. L. REV. 949 (arguing that interstate federalism should constrain unwanted state coercion on defendants). But see Martin H. Redish, *Due Process, Federalism, and Personal Jurisdiction: A Theoretical Evaluation*, 75 NW. U. L. REV. 1112, 1120-33 (1981) (arguing that federalism is wholly irrelevant to due process).

accurately disentangle it—a decapitation to cure a headache.<sup>120</sup> Substantive uniformity may arguably be good for progressive social change,<sup>121</sup> but it eliminates choice from choice of law altogether.

A choice-of-law regime that advances systemic factors, right-answer factors, and federalism is a choice-of-law regime whose allocation of authority determines parties' rights in a fair and practical way.

### *B. The Traditional Rule and the Public Policy Exception*

The traditional rule for interstate marriage recognition has been that the validity of a marriage granted in the state in which it was celebrated is portable to other states.<sup>122</sup> Even after the choice-of-law revolution in which many states abandoned traditional territorial rules for modern inquiries into “interests,”<sup>123</sup> “significant relationships,”<sup>124</sup> “comparative impairment,”<sup>125</sup> or “choice-influencing considerations,”<sup>126</sup> states continued to use this *lex loci celebrationis* rule.<sup>127</sup>

The exceptions to the general rule reflect this. The most common is the public policy exception. Generally, the public policy exception is invoked by a court when the forum's choice-of-law rules direct it to apply foreign law but if the application would “violate some fundamental principle of justice, some prevalent conception of good morals, some deep-rooted tradition of the common weal” in the forum.<sup>128</sup> The ability to invoke it must rise to this level of offensiveness. Though its propriety and constitutionality have come into question,<sup>129</sup> it is a tool over which courts have considerable latitude to use in different ways and with different results.<sup>130</sup> In marriage recognition, this exception is largely invoked in two ways.<sup>131</sup>

First, a marriage valid where celebrated may not be recognized if the state where recognition is sought finds the marriage offensive to its public policy.<sup>132</sup> This rule has persisted through the First and Second Restatements.<sup>133</sup>

<sup>120</sup> See ROOSEVELT, *supra* note 11, at 39.

<sup>121</sup> See *infra* Part III.

<sup>122</sup> See RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 283 (1971).

<sup>123</sup> CURRIE, *supra* note 106, at 90.

<sup>124</sup> RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 6 (1971).

<sup>125</sup> William F. Baxter, *Choice of Law and the Federal System*, 16 STAN. L. REV. 1, 33 (1963).

<sup>126</sup> Robert A. Leflar, *Choice-Influencing Considerations in Conflicts Law*, 41 N.Y.U. L. REV. 267 (1966).

<sup>127</sup> See Kramer, *supra* note 11, at 1994.

<sup>128</sup> See *Loucks v. Standard Oil Co.*, 120 N.E. 198, 202 (N.Y. 1918).

<sup>129</sup> See Kramer, *supra* note 11; John K. Beach, *Uniform Interstate Enforcement of Vested Rights*, 27 YALE L.J. 656, 662 (1918);

<sup>130</sup> Sometimes, “the extent and nature of the contacts between the parties, the litigation, and the forum plainly bear on whether the public policy exception is applied.” Kramer, *supra* note 11, at 1974. Application of this exception in practice also undermines its propriety. Though the proper outcome from a public policy exception should be dismissal on jurisdictional grounds, courts today tend to use the exception to justify applying forum law—a situation especially prevalent in marriage cases. *Id.* at 1973-74.

<sup>131</sup> Other exceptions and escape devices exist, but for purposes of this Comment, only the public policy exception will be addressed here. For examples of other exceptions, see Kramer, *supra* note 11.

<sup>132</sup> ROOSEVELT, *supra* note 11, at 218.

<sup>133</sup> See RESTATEMENT (FIRST) OF CONFLICT OF LAWS § 134 (“If any effect of a marriage created by the law of one state is deemed by the courts of another state sufficiently offensive to the policy of the latter state, the latter state will refuse to give that effect to the marriage.”); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 283 (“A marriage which satisfies the requirements of the state where the marriage was contracted will everywhere be recognized as valid unless it violates the public policy of another state which had the most significant relationship to the spouses and the marriage at the time of the marriage.”).

Second, a marriage that offends the public policy of the state with the most significant relationship to the marriage when it was celebrated—usually, the couple’s domicile—will be invalidated.<sup>134</sup> The “most significant relationship” is the conceptual core of the Second Restatement.<sup>135</sup> Essentially, the “most significant relationship” ensures that policies and interests of all relevant states and parties are considered.<sup>136</sup> It’s not hard to imagine why the domicile, as the state ultimately regulating the incidents of a couple’s marital status, would claim an interest.<sup>137</sup> And “[b]ecause each state possesses a great interest in the marital relationships within its borders, each state has traditionally been sovereign to decide for itself who should be able to occupy these relationships.”<sup>138</sup>

In practice, the public policy exception will be used to apply forum law and refuse recognition of the marriage in question.<sup>139</sup> Skepticism about its use is not unfounded. Its use is widely discretionary and has the potential to swallow the rule. Defenders of the exception would argue, however, that the exception allows states to vindicate their own legitimate interests<sup>140</sup> and that the exception is invoked because the forum has some relationship or interest in the outcome of the case.<sup>141</sup>

In marriage, the forum in which the status of the marriage is disputed most likely does have a strong interest. Though the traditional rule is that the state where the marriage was celebrated dictates the validity of the marriage, out of the three possible states with potential interest in the marriage,<sup>142</sup> the domicile likely has the biggest interest, especially if the couple is domiciled there for a long time.<sup>143</sup> Beyond the contention that states inherently have an interest in establishing the marriage prohibitions within their borders, if a state’s interest in regulating marriage within its borders is to regulate a long-term relationship with long-term legal and societal implications, it is surely the domicile that is primarily responsible for those relationships.<sup>144</sup>

<sup>134</sup> ROOSEVELT, *supra* note 11, at 217.

<sup>135</sup> The heart of what makes up the “most significant relationship” can be summed up by the factors set forth in section six of the Second Restatement. RESTATEMENT (SECOND) OF CONFLICT OF LAWS Introduction.

<sup>136</sup> Roosevelt, *supra* note 11, 84-86.

<sup>137</sup> Rosenstiel v. Rosenstiel, 209 N.E.2d 709, 712 (1965) (“The State or country of true domicile has the closest real public interest in a marriage . . .”).

<sup>138</sup> Sherrerr v. Sherrerr, 335 U.S. 343 (1948).

<sup>139</sup> *But see supra* note 130.

<sup>140</sup> See David F. Cavers, *A Critique of the Choice-of-Law Problem*, 47 HARV. L. REV. 173, 183 (1933).

<sup>141</sup> See Monrad G. Paulsen & Michael I. Sovern, “Public Policy” in the *Conflict of Laws*, 56 COLUM. L. REV. 969, 981 (1956). Compare Mertz v. Mertz, 3 N.E.2d 597 (N.Y. 1936) (invoking the public policy exception to apply forum law to give the plaintiff a claim where the forum was the plaintiff’s (and defendant’s) domicile), with Holzer v. Deutsche Reichsbahn-Gesellschaft, 14 N.E.2d 798 (N.Y. 1938) (declining to use the public policy exception to avoid applying the law of Nazi Germany in the forum state of New York because the parties had no contacts with the forum).

<sup>142</sup> Without any overlaps, these three states would be the state in which the marriage was celebrated, the state of domicile, and the state in which recognition is sought.

<sup>143</sup> See *Developments in the Law: The Law of Marriage and Family*, 116 HARV. L. REV. 1996, 2037 (2003) (“Domicile, then, is the paramount ‘interest-creating contact’ between a state and a marriage.”); EUGENE F. SCOLES & PETER HAY, CONFLICT OF LAWS § 13.8, at 572 (2004) (“As the continuing marriage relationship is undertaken and expectations develop, the state most significantly concerned and related would seem to be the intended family domicile of the parties . . .”); see also *In re Marriage of Reed*, 266 N.W.2d 795, 796 (Iowa 1975) (applying the choice-of-law rules of the state in which the couple had resided the longest). *But see* Susan Frelich Appleton, *Leaving Home? Domicile, Family, and Gender*, 47 U.C. DAVIS L. REV. 1453, 1501 (2014) (suggesting that same-sex marriage, by necessarily subverting the gendered foundations for domicile’s centrality in domestic relations law, may erode those foundations); *infra* Part III.

<sup>144</sup> An approach that has been attempted in the courts and contemplated in scholarship is an incidents-based approach to marriage recognition. Note that disputes over marriage recognition “almost exclusively concern[] questions

Despite the vulnerability to over- and misuse, this feature of the public policy exception makes sense. Especially if courts are likely to invoke the public policy exception only when it claims a real interest and where the difference with foreign law is one of substantive policy rather than of degree,<sup>145</sup> a choice-of-law system should aim in part to vindicate the policies of the state that has the biggest stake in the outcome. As to this goal, the public policy exception succeeds.

But the public policy exception may be bad for uniformity. Marriage recognition disputes almost always arise out of a claim for an incident of marriage.<sup>146</sup> If public policy exceptions are invoked on an incident-by-incident basis depending on the policy behind the incident and the state's interest in advancing the policy, couples would be forced to "relitigate their marital status repeatedly as they request recognition of their marriage for each incident."<sup>147</sup> Under this kind of regime, the status of a couple's marriage would be fragmented, resulting in an inconsistent mosaic of just some claims.

If instead states employed blanket nonrecognition regardless of the incident sought, predictability would certainly be less elusive—especially if states' mini-DOMA statutes were clear and reliable indicators of states' public policies with respect to same-sex marriage.<sup>148</sup>

How the public policy exception implicates federalism at first glance seems unclear. The state in which recognition is sought—often the domicile—can exercise autonomy by advancing its own interests. However, it is inconsistent with principles of horizontal, interstate federalism that states should be able to flatly reject a sister-state's policies just because it doesn't like them.<sup>149</sup> But it is convincing to argue that, where federalism is concerned, state autonomy vis-à-vis federal authority that would seek to displace it is at greater stake than state autonomy vis-à-vis sister-state autonomy. While interstate federalism may rightly be considered "undertheorized"<sup>150</sup> or treated "with considerably less seriousness,"<sup>151</sup> it is also true that interstate relations are expressly regulated by Congress and enforced by the Supreme Court under numerous constitutional provisions that aim to more closely unite states.<sup>152</sup> Federal-state relations, on the other hand, implicate a structural constitutional principle that fundamentally resists federal authority that would threaten states' sovereignty, minority rule, and localized interests. State-state relations may trigger other constitutional concerns,<sup>153</sup> but as far as federalism as a choice-of-law value is concerned, the public policy exception is consonant with it.

---

regarding the incidents of marriage" rather than the recognition in and of itself. *See* SCOLES & HAY, *supra* note 143, § 13.3, at 434. Even if the state in which recognition is sought is not the domicile, the state providing for the incident likely has a connection and interest in the outcome related to that incident. The incidents-based approach would consider marriage recognition only within the incident being sought with attention not only to the public policy of the forum in general with respect to marriage but also to the underlying policy of the incident sought. *See, e.g., In re Estate of Lenherr*, 314 A.2d 255, 258-59 (Pa. 1974) (finding that a marriage that violated a state law prohibiting marriage after a divorce resulting from adultery was nonetheless valid for purposes of a marital exemption to inheritance tax).

<sup>145</sup> *See* Kramer, *supra* note 11, at 1970 ("[C]ourts in many states recognize that some differences are more matters of degree than of fundamental policy.").

<sup>146</sup> *See supra* note 144.

<sup>147</sup> Cox, *supra* note 11, at 1063 n.168.

<sup>148</sup> *See supra* notes 42-51.

<sup>149</sup> Horizontal federalism can be described as "how the existence of multiple states limits the power of each when interacting with the others or with the others' citizens." Allan Erbsen, *Horizontal Federalism*, 93 MINN. L. REV. 493, 501 (2008); *see also* Brilmayer, *supra* note 119.

<sup>150</sup> Erbsen, *supra* note 149, at 495.

<sup>151</sup> Brilmayer, *supra* note 119, at 949.

<sup>152</sup> Examples include the Full Faith and Credit, Privileges and Immunities, Extradition, Guarantee, and Commerce Clauses. *See* Kramer, *supra* note 22, at 1986-97 & n.91.

<sup>153</sup> *See infra* notes 154-64 and accompanying text.

## C. DOMA

Given the centrality of Full Faith and Credit in the post-*Baehr* political hullabaloo, perhaps its relevance is a prudent place to start.

Recall that the impetus behind DOMA was uncertainty about the Full Faith and Credit Clause's mandates.<sup>154</sup> The fear (or hope) was that the Full Faith and Credit Clause would require states that would otherwise prohibit their same-sex couples to marry to recognize valid same-sex marriages performed out of state.<sup>155</sup> If this was true, regardless of whether state courts would use the traditional public policy exception or their mini-DOMA statutes to refuse to recognize a marriage, such a refusal would be unconstitutional. During the oral arguments for *Obergefell*, several Justices seemed to think that Full Faith and Credit was at least relevant, pressing counsel to be persuasive of the opposite.<sup>156</sup> And this theory had traction with at least some academics weighing in on the topic.<sup>157</sup>

But others have ardently argued that Full Faith and Credit is wholly irrelevant to marriage recognition. It was "preposterous," in fact, to believe otherwise.<sup>158</sup> These commentators point out that marriages are not *judgments* of the kind that fall within the scope of the Full Faith and Credit Clause. Unlike divorce, which culminates in a court-made judgment, marriage licenses and certificates are "laws" that have not historically been required to be given full faith and credit.<sup>159</sup> In the absence of a true binding *judgment*, states are free to rely on their own choice-of-law systems, application of forum law being among the possible outcomes.<sup>160</sup>

This is convincing. It is established that "the Full Faith and Credit Clause does not compel 'a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate.'"<sup>161</sup> Thus, the only constraint the Full Faith and Credit Clause imposes on marriage recognition laws is that a state may apply its own law only if it has significant contacts creating state interests.<sup>162</sup> If a same-sex couple validly married in state A moved with an intent to stay to state B where same-sex marriage offends B's public policy, state

<sup>154</sup> See *supra* notes 38-41 and accompanying text.

<sup>155</sup> Andrew Koppelman has argued that this was largely the result of popular media repeating this claim. See KOPPELMAN, *supra* note 99, at 117. Clearly, though, Congress also acted in response to this purported possibility. See *supra* note 52. Professor Aviel has also cautioned that same-sex marriage advocates, including Professor Koppelman, may have had strategic reasons to quash the claim, hoping to suppress panic-induced action from same-sex marriage opponents. See Aviel, *supra* note 93, 729 n.28.

<sup>156</sup> See *supra* note 93 and accompanying text.

<sup>157</sup> See *supra* note 40.

<sup>158</sup> See Ralph U. Whitten, *Full Faith and Credit for Dummies*, 38 CREIGHTON L. REV. 465, 479 (2005) ("The subject of same-sex marriage has produced a seemingly endless set of preposterous ideas about why the Full Faith and Credit Clause requires state to give effect to marriages performed in other states."); see also Patrick J. Borchers, *The Essential Irrelevance of the Full Faith and Credit Clause to the Same-Sex Marriage Debate*, 28 CREIGHTON L. REV. 353 (2005); KOPPELMAN, *supra* note 100, at 117.

<sup>159</sup> WILLIAM L. REYNOLDS & WILLIAM M. RICHMAN, *THE FULL FAITH AND CREDIT CLAUSE: A REFERENCE GUIDE TO THE UNITED STATES CONSTITUTION*. But cf. Balian, *supra* note 40 (arguing that marital *decrees* should be given effect as judgments under the Full Faith and Credit Clause). For a take on DOMA's unique impact on divorce, which are considered legal judgments, see KOPPELMAN, *supra* note 99, at 123-24.

<sup>160</sup> Cf. *Nevada v. Hall*, 440 U.S. 410 (1979) (upholding the public policy exception to the application of laws but not judgments).

<sup>161</sup> *Baker v. Gen. Motors Corp.*, 522 U.S. 222, 232 (1998) (quoting *Pacific Emps. Ins. Co. v. Ind. Accident Comm'n*, 306 U.S. 493 (1939)).

<sup>162</sup> See *Allstate Ins. Co. v. Hague*, 449 U.S. 302 (1981).

B has at least some contact with the couple, as it is now the couple's new domicile.<sup>163</sup> And as its new domicile, state B surely has an interest in regulating a relationship within its borders.<sup>164</sup>

The Full Faith and Credit Clause itself should be thought of as having almost no bearing on DOMA with respect to marriage.

Section two of DOMA—the statute's choice-of-law provision—doesn't seem to do much more (or less) than the public policy exception does beyond codifying it. Since states would still be empowered to rely on their public policy regarding same-sex marriage to grant or refuse recognition, the systemic, right-answer, and federalism characteristics of the traditional rule with the public policy exception apply here as well. Further, any doubts about the constitutionality of the public policy exception are put to rest under section two, a legitimate exercise of Congress's powers under the Effects Clause.

#### D. RFMA

Section four of RFMA is the antipode of section two of DOMA. Where DOMA did not require any state to recognize same-sex marriage performed validly out of state, RFMA mandates such recognition.<sup>165</sup> RFMA notably does not require states to permit same-sex marriage within their own borders—only that states honor existing same-sex marriages.

RFMA obviously mandates uniformity. That uniformity also facilitates maximum predictability and administrability. Because the celebration of a marriage occurs at a single moment in time within one state, parties and courts need consider only that state's law.<sup>166</sup>

DOMA and the public policy exception empowered states—and in particular domiciles—to advance their own public policies. And because a couple's domicile is often the most interested state, DOMA and the traditional rule both generally lead to the “right answer.”<sup>167</sup>

RFMA works differently. Though RFMA preempts interstate marriage recognition, whether a couple can get married in the first place is still up to the state of celebration. By requiring states to recognize a validly performed marriage, RFMA advances the public policy of the state of celebration rather than that of the state of domicile.<sup>168</sup>

Giving more weight to the place of celebration over the domicile seems further from the “right answer.” Consider a same-sex couple domiciled in state A, which does not issue marriage licenses to same-sex couples. This couple goes to state B to be validly married. When they return home, RFMA would require state A to recognize their marriage. As long as state A remains the couple's domicile, state A would be compelled under RFMA to advance the policies of state B with respect not only to the validity of the marriage but also to the regulation of its incidents. Whether or not one agrees with the public policy of either state, giving effect to the policies of state B—an uninterested state—and eschewing those of state A—the most interested state—do not

<sup>163</sup> Patrick J. Borchers, *Baker v. General Motors: Implications for Interjurisdictional Recognition of Non-Traditional Marriages*, 32 CREIGHTON L. REV. 147, 171 (1998).

<sup>164</sup> See *supra* notes 142-45 and accompanying text.

<sup>165</sup> Respect for Marriage Act, Pub. L. 117-228, § 4, 136 Stat. 2305 (2022).

<sup>166</sup> See William Baude, *Beyond DOMA: Choice of State Law in Federal Statutes*, 64 STAN. L. REV. 1371, 1417 (2012) (observing that marriage as a long-term legal relationship informing hundreds of other legal issues makes systemic factors particularly desirable).

<sup>167</sup> See *supra* subsections II.B–C.

<sup>168</sup> See Appleton, *supra* note 143, at 1503 (“[P]ost-*Windsor*, the place of celebration is competing with the domicile as the touchstone for marriage validity, regardless of any strong public policy the domicile might have articulated.”).



maximize the right-answer factors that make up a good choice-of-law regime.<sup>169</sup> Put differently, it makes more sense to use a personal connecting factor (i.e., domicile) rather than a territorial one (i.e., place of celebration) to govern issues relating to persons and their relationships.<sup>170</sup>

For similar reasons, section four of RFMA as a choice-of-law regime also does not advance federalism.<sup>171</sup> The national policy imposed by RFMA prevents states from fully regulating an area of law so fundamentally local and traditionally within the states' exclusive prerogative.<sup>172</sup> RFMA compels not only federal policy but also sister-state policy on states that have enjoyed autonomy in this area.

### *E. The Better Choice of Law*

Between the traditional rule and DOMA, there are hardly any differences.<sup>173</sup> In general, though, the choice-of-law regime under DOMA advances many, if not most, choice-of-law desiderata. Like the public policy exception, DOMA may undermine predictability. But overall, the strength given to the domicile and the espousal of federalism suggests that the choice of law under DOMA would produce an outcome that is sensible, taking into account individual state policies and the policies underlying the substantive law at hand.

RFMA, in contrast, would empower Congress to set a national choice-of-law rule at the expense of states' marriage recognition policies. Though uniform, clear, and predictable, RFMA awkwardly favors a territorial connecting factor over a personal connecting factor to govern issues relating to people and their relationships. And in doing so, it robs states of their interest in regulating the relationships at home within their borders and instead forces them to bow to both federal and sister-state policy.

Between DOMA and RFMA, DOMA appears to be the better choice-of-law regime.

## III. A CONFLICT OF VALUES

Choice-of-law values, legislative values, and personal values are difficult to align. Same-sex marriage and LGBTQ+ rights in general involve personal, moral beliefs about human rights, dignity, and liberty<sup>174</sup>—perhaps even more so than any legal justification. So while on paper the same-sex marriage debate could be characterized as a choice-of-law problem, in the real world, it is much more. When fundamental rights and dignity are at stake, people will turn to the Constitution to guarantee them globally, not to Congress to make sensible choice-of-law rules that would preserve the autonomy of states who would deny those rights. When attempting to institute change, “everything turns on the ultimate outcome.”<sup>175</sup> No advocate of progressive social

<sup>169</sup> But see Baude, *supra* note 166, at 1418 (suggesting that a place-of-celebration rule is superior to a domicile rule since domicile can be manipulated in a way that place of celebration cannot).

<sup>170</sup> Cf. ROOSEVELT, *supra* note 11, at 110 (identifying two types of connecting factors—personal and territorial—that should be considered in matters of torts).

<sup>171</sup> But see Lynn D. Wardle, *Section Three of the Defense of Marriage Act: Deciding, Democracy, and the Constitution*, 58 *DRAKE L. REV.* 951, 984-85 (2010) (arguing that RFMA does not violate federalism because it does not define substantive state definitions of marriage).

<sup>172</sup> See *supra* notes 1-7.

<sup>173</sup> DOMA perhaps has the advantage of constitutional clarity under the Full Faith and Credit Clause, but whether that is true may largely depend on who you ask. See *supra* notes 154-64.

<sup>174</sup> This is true for both advocates and opponents of same-sex marriage. See Butler, *supra* note 20, at 850-63.

<sup>175</sup> David L. Chambers, *Couples: Marriage, Civil Union, and Domestic Partnership*, in *CREATING CHANGE: SEXUALITY, PUBLIC POLICY, AND CIVIL RIGHTS* 303 (John D’Emilio et al. eds., 2000).

change—or an advocate of the contrary, for that matter—will cast aside an opportunity to zealously defend a fundamental right to instead avoid any potential sacrifices to a robust choice-of-law doctrine.

There are three primary routes by which people may seek social change on a national level: formal constitutional amendment, informal constitutional amendment, and legislative action. Despite glimmers of the possibility of a relevant formal constitutional amendment through either the Federal Marriage Amendment or the Equal Rights Amendment,<sup>176</sup> a formal constitutional amendment is, today, nearly impossible and accordingly not on advocates' list of priorities.<sup>177</sup>

The outcome of *Obergefell* is an example of an informal constitutional amendment. Without altering the actual text of the Equal Protection or Due Process Clauses, the Supreme Court essentially amended them to include rights for same-sex couples.<sup>178</sup> Informal amendment is exactly the kind of decapitation to cure a headache that is dismissive of choice of law. Although supporters of same-sex marriage would prefer guaranteed rights across the board over rules for how to allocate state authority, we have seen even as recently as last term that even those seemingly earned constitutional rights are subject to a fickle Supreme Court.<sup>179</sup> When those federal constitutional rights are suddenly stripped away, the choice of law rests on the rules that lie dormant underneath.

DOMA and RFMA are evidence that the political process doesn't seem that much more attentive to choice of law either. Though DOMA and RFMA did contain choice-of-law provisions, the superfluousness of DOMA suggests that it can fairly be characterized as a political statement rather than a working choice-of-law rule. And while RFMA more clearly changes the underlying rule, it fails to meaningfully advance desirable choice-of-law values.<sup>180</sup>

Why don't any of these major modes of national social change seem to advance choice-of-law values or develop robust choice-of-law doctrine?<sup>181</sup> What is it about choice of law that appears irreconcilable with the outcomes same-sex marriage proponents seek?

It would be convenient to pin it all on federalism. Federalism, as we have seen, operates in a manner similar to choice of law. And much of what it can be characterized to promote is shared with modern choice-of-law values. But federalism is not the whole story. Even if, as in RFMA, a choice-of-law regime does not advance federalism, issues beyond state autonomy exist. For

<sup>176</sup> See *supra* note 76. The possibility of an Equal Rights Amendment has continuously flickered in progressives' collective ambitions since the 70s. See, e.g., H.J. Res. 208, 92d Cong. (1971); S.J. Res. 10, 98th Cong. (1983); S.J. Res. 10, 113th Cong. (2013); S.J. Res. 4, 118th Cong. (2023).

<sup>177</sup> See Jill Lepore, *The United States' Unamendable Constitution*, NEW YORKER (Oct. 26, 2022), <https://www.newyorker.com/culture/annals-of-inquiry/the-united-states-unamendable-constitution> (describing how the U.S. Constitution was not meant to be amended easily and finding that today its amendment rate is among the lowest in the world).

<sup>178</sup> See Heather Gerken, *The Hydraulics of Constitutional Reform: A Skeptical Response to Our Undemocratic Constitution*, 55 DRAKE L. REV. 925, 929, 930 & n.23 (2007) (describing informal amendment as law that is binding, often through judicial interpretation, without actually changing the text of the Constitution through political actors).

<sup>179</sup> See *supra* note 95.

<sup>180</sup> See *supra* subsections II.D–E.

<sup>181</sup> Same-sex marriage is not the only area where choice of law seems to be an obstacle to the pursuit of justice, rights, or claims. Certifying class actions—a major compensation- or civil rights injunction-seeking tool—requires clearing the difficult hurdle of finding a single law to govern all claims. See *Phillips Petroleum Co. v. Shutts*, 427 U.S. 797 (1985). But perhaps in the complex litigation space, the MDL provides a meaningful alternative. See Andrew D. Bradt, *Something Less and Something More: MDL's Roots as a Class Action Alternative*, 165 U. PA. L. REV. 1711, 1715 (2015) (describing the MDL as having of fewer limitations than a class action). For a theoretical take on types of conflicts and their relationships to justice broadly, see Arthur Taylor von Mehren, *Choice of Law and the Problem of Justice*, 41 LAW & CONTEMP. PROBLEMS 27 (1977).

example, the crucial issue around domicile versus place of celebration as the better locus cannot be attributed to federalism.

Federalism is often invoked to mean “states’ rights,” when it is, more broadly speaking, simply the constitutional project of striking the right balance between federal and state authority to ultimately facilitate interdependence.<sup>182</sup> Choice of law, on the other hand, is a pursuit that inherently divides rather than consolidates. It is interested in determining where one sovereign’s authority ends and another’s begins, not coalescing disparate minority voices into a complex but unified national identity.<sup>183</sup> Choice of law seems inconsistent with “the constitutional commitments to national union and national citizenship.”<sup>184</sup>

How can progressives maximize both choice-of-law values and national social change? I offer two areas of potential.

One possibility is specific to the context of marriage. The “right answer” to marriage recognition, I have argued, should probably center around the domicile. But perhaps modernizing our understanding of the domicile as it has been applied to marriage undermines this longstanding pillar of domestic relations.

Professor Appleton has traced the history of the domicile in domestic relations law and has found that it is repressive and gendered in unexpected ways. While we think of domicile as the “home,” it also espouses a state’s desire to control or punish sexual transgressions or deviations and a serious underappreciation for women’s agency with respect to the home beyond mere caretaking.<sup>185</sup> In an age where people and families are increasingly mobile, diverse, and non-hierarchical, contemporary reinforcement of domicile also (in)advertently reinforces those norms.<sup>186</sup>

Professor Appleton invites us to use same-sex marriage—an inherently gender-subversive union—as an opportunity to rethink the domicile.<sup>187</sup> Perhaps an updated understanding of domicile and marital relations could provide an illuminating way into what a state’s interests as to marriage are today where traditional understandings of gender have largely been left in the past. If the domicile as it has been traditionally understood is not so important after all, then the choice-of-law values that RFMA can be characterized to have ignored should be reconsidered.

A second possibility applies more broadly. If the Full Faith and Credit Clause seeks to constrain choice of law by limiting how much a state can be fractured from a sister-state, perhaps we should look also to the Constitution for a way to limit how much a state can be fractured from the union as a whole.

At least three constitutional provisions may, individually or as a unit, constrain choice of law in a way that preserves “the constitutional commitments to national union and national citizenship.”<sup>188</sup> Professor Kreimer has indicated that the Commerce Clause, the Privileges and Immunities Clause of Article IV, and the Privileges or Immunities Clause of the Fourteenth Amendment together make up an extratextual scheme of national citizenship, a fundamental part

<sup>182</sup> See Gerken, *supra* note 117, at 7 (describing federalism, when removed from the “shadow” of sovereignty, as “promot[ing] voice, not exit; integration, not autonomy; interdependence, not independence”).

<sup>183</sup> See *id.* at 7-8.

<sup>184</sup> See Seth F. Kreimer, *The Law of Choice and Choice of Law: Abortion, the Right to Travel, and Extraterritorial Regulation in American Federalism*, 67 N.Y.U. L. REV. 451, 463 (1992).

<sup>185</sup> See Appleton *supra* note 143, at 1464-69.

<sup>186</sup> *Id.* at 1472-86.

<sup>187</sup> *Id.* at 1456-57.

<sup>188</sup> See Kreimer, *supra* note 184, at 463.

of American federalism.<sup>189</sup> Perhaps a structural-constitution argument for national citizenship may constrain the degree to which choice of law would otherwise treat states simply as individual sovereigns rather than as parts of a larger system of governance and source of rights. A national citizenship principle may in this way narrow the gap between choice of law and national social change.

\* \* \*

The political and moral agita around same-sex marriage and gay rights has understandably led to seeking and finding legal solace in the form of federally recognized fundamental rights. And while the Constitution certainly may contain such rights, it is choice of law that ultimately arbitrates them. When the system of rights-allocation underlying those rights is overlooked, they exist in a state of suspension, subject to sudden reversal and without a foundation upon which to fall back. It is incumbent on those who aim to protect individual rights to be attentive to the strength of that foundation.

---

<sup>189</sup> *See id.* (“[F]ederalism does not entail a moral Balkanization, in which competing moral agendas seek without restraint to conquer foreign territories; it should not be a system in which citizens carry home-state law with them as they travel, like escaped prisoners dragging a ball and chain.”).

## Applicant Details

First Name	Nicholas		
Last Name	Sweeney		
Citizenship Status	U. S. Citizen		
Email Address	<a href="mailto:sweeneyn@umich.edu">sweeneyn@umich.edu</a>		
Address	<table> <tr> <th>Address</th> </tr> <tr> <td> <b>Street</b>  <b>15 Riverplace Drive, Unit 1533</b>  <b>City</b>  <b>South Portland</b>  <b>State/Territory</b>  <b>Maine</b>  <b>Zip</b>  <b>04106</b>  <b>Country</b>  <b>United States</b> </td> </tr> </table>	Address	<b>Street</b> <b>15 Riverplace Drive, Unit 1533</b> <b>City</b> <b>South Portland</b> <b>State/Territory</b> <b>Maine</b> <b>Zip</b> <b>04106</b> <b>Country</b> <b>United States</b>
Address			
<b>Street</b> <b>15 Riverplace Drive, Unit 1533</b> <b>City</b> <b>South Portland</b> <b>State/Territory</b> <b>Maine</b> <b>Zip</b> <b>04106</b> <b>Country</b> <b>United States</b>			
Contact Phone Number	(614) 264-9409		

## Applicant Education

BA/BS From	Haverford College in Pennsylvania
Date of BA/BS	May 2019
JD/LLB From	The University of Michigan Law School <a href="http://www.law.umich.edu/currentstudents/careerservices">http://www.law.umich.edu/currentstudents/careerservices</a>
Date of JD/LLB	May 3, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Michigan Law Review
Moot Court Experience	No

## Bar Admission

## Prior Judicial Experience

Judicial Internships/ Externships	No
--------------------------------------	----

Post-graduate Judicial Law Clerk      **No**

**Specialized Work Experience**

**Recommenders**

Edmonds, Mira  
edmondm@umich.edu  
Halberstam, Daniel  
dhalber@umich.edu  
734-763-4408  
Vogel, Cecilia  
Cecilia.Vogel@usdoj.gov

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

**NICHOLAS ARMIG SWEENEY**

1200 Broadway Street, Apt. 714, Ann Arbor, MI 48105  
(614) 264-9409 (cell) | [sweeneyn@umich.edu](mailto:sweeneyn@umich.edu)

The Honorable Jamar K. Walker  
U.S. District Court for the Eastern District of Virginia  
Walter E. Hoffman U.S. Courthouse  
600 Granby Street  
Norfolk, VA 23510

June 12, 2023

Dear Judge Walker:

I am a third-year law student at the University of Michigan Law School, and I am writing to apply for a clerkship in your chambers for the 2024-2025 term. As an aspiring Assistant U.S. Attorney who had the opportunity to contribute to white collar, public corruption, and narcotics cases as an intern at the SDNY U.S. Attorney's Office, I admire your experience prosecuting white collar crime at the EDVA U.S. Attorney's Office. Further, I am particularly interested in clerking and practicing in EDVA in light of its accelerated docket. For these reasons, I would find the opportunity of clerking in your chambers especially meaningful and enriching.

Prior to law school, I spent two years working in Armenia and France and observed various issues related to rule of law and human rights. These experiences inspired me to pursue a career in government or public interest litigation, and my experience at the U.S. Attorney's Office has more specifically drawn me to federal prosecution. In law school, I have endeavored to improve my research and writing skills. I received Honors in my legal writing course, was selected to serve as an Executive Editor of the *Michigan Law Review*, and have completed a draft of a student Note centered on treaty-withdrawal and executive power. As an advocate, I took on a unique level of responsibility in my litigation clinic by leading a five-hour, trial-like administrative hearing. As part of this hearing, I wrote direct- and cross-examinations for ten witnesses, presented an opening statement and closing argument, and independently researched case law, statutory law, and legislative history. I handled this responsibility in addition to several eviction cases, for which I drafted pleadings, conducted settlement conferences, and appeared in court regularly. I believe these experiences will prepare me well to succeed as a clerk in your chambers.

I have enclosed my resume, law school transcript, and a writing sample for your review. Letters of recommendation from two of my professors and from my work supervisor at SDNY have also been provided. Their names and contact information are:

- Professor Mira Edmonds: [edmondm@umich.edu](mailto:edmondm@umich.edu), (734) 763-4408
- Professor Daniel Halberstam: [dhalber@umich.edu](mailto:dhalber@umich.edu), (734) 647-1964
- Cecilia Vogel, Assistant U.S. Attorney, Southern District of New York, [Cecilia.Vogel@usdoj.gov](mailto:Cecilia.Vogel@usdoj.gov), (646) 640-6296

Thank you for your time and consideration.

Respectfully,  
Nicholas A. Sweeney

**NICHOLAS ARMIG SWEENEY**

1200 Broadway Street, Apt. 714, Ann Arbor, MI 48105

(614) 264-9409 (cell) | [sweeneyn@umich.edu](mailto:sweeneyn@umich.edu)

**EDUCATION**

**UNIVERSITY OF MICHIGAN LAW SCHOOL**

Ann Arbor, MI

*Juris Doctor*

Expected May 2024

**GPA** 3.793

**Journal:** *Michigan Law Review* (Executive Editor, Editorial Board Member).

**Activities:** Independent Student Note Research with Professor Daniel Halberstam (writing on withdrawal from international agreements); Civil-Criminal Litigation Clinic (Student Attorney); M For The People – Public Service and Prosecutorial Society (Events Chair); Environmental Crimes Project (Pro Bono Volunteer).

**HAVERFORD COLLEGE**

Haverford, PA

*Bachelor of Science* in Astrophysics, minor in Philosophy, *Phi Beta Kappa*, *Magna Cum Laude*

May 2019

**Honors:** High Honors in Astrophysics; ITA Tennis Scholar-Athlete (2016-19); Ambler Student-Athlete Award.

**Activities:** *Haverford Law Review* (Ed Board Member; Author of *The International Criminal Court at a Crossroads: Tracing the Development of Universal Norms*, 2019); Mock Trial (Attorney); Varsity Tennis (Co-Captain).

**EXPERIENCE**

**MANHATTAN DISTRICT ATTORNEY'S OFFICE**

New York, NY

*Summer Law Fellow*

June 2023 – August 2023

**MICHIGAN CIVIL-CRIMINAL LITIGATION CLINIC**

Ann Arbor, MI

*Student Attorney*

August 2022 – May 2023

- Spoke on the record as lead counsel for plaintiff or defendant in landlord-tenant and administrative matters.
- Prepared and delivered direct examinations and opening and closing statements for an administrative hearing.
- Researched and wrote motions, counseled clients, drafted pleadings, and negotiated settlements.

**U.S. ATTORNEY'S OFFICE, SOUTHERN DISTRICT OF NEW YORK**

New York, NY

*Summer Law Intern – Criminal Division (Money Laundering Unit; Public Corruption Unit)*

May 2022 – August 2022

- Drafted motions and briefs on issues such as Compassionate Release during the Covid-19 pandemic and the interpretation of U.S. Sentencing Guidelines provisions.
- Researched and wrote memos on evidentiary matters such as the applicability of hearsay exceptions.
- Performed background investigative work and attended proffers, witness preparations, and court proceedings.

**LYCÉE DÉODAT DE SÉVERAC**

Toulouse, France

*English Language Teacher*

September 2020 – April 2021

- Taught high-school students and coached graduating students for cumulative “Baccalauréat” exams.
- Graded and provided feedback for student presentations on cultural themes such as politics, AI, and social justice.

**SHIRAK STATE UNIVERSITY**

Gyumri, Armenia

*Guest Lecturer and English Teacher*

October 2019 – January 2020

- Lectured to prospective foreign language teachers on English teaching methodology from the U.S.
- Directed English Club for students to improve conversational fluency and understanding of American culture.

**HAVERFORD | SWARTHMORE | OHIO WESLEYAN**

Haverford, PA | Swarthmore, PA | Delaware, OH

*Three Years as Summer Research Fellow*

Summers 2016, 2017, 2018

- Conducted long-term Astrophysics research leading to thesis and presentations at national conferences.

**ADDITIONAL**

**Languages:** French (Fluent – DALF C1), Spanish (Intermediate), Armenian (Intermediate).

**Volunteer:** “AYO” Women’s Rights Fundraising Project (2020, 20hrs/wk); Armenia Tree Project (2020, 20hrs/wk); Gyumri High School Volunteer English Teacher (2020, 20hrs/wk); Haverford Astronomy Night (2017-19, 2hrs/wk).

**Interests:** Tennis; violin; film; learning new languages.



Control No: E196660101

Issue Date: 05/30/2023

Page 1

# The University of Michigan Law School

## Cumulative Grade Report and Academic Record

Name: Sweeney, Nicholas Armig  
Student#: 48134572



*Paul R. Sweeney*  
University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Towards Program	Credit Grade
<b>Fall 2021 (August 30, 2021 To December 17, 2021)</b>								
LAW	510	004	Civil Procedure	Maureen Carroll	4.00	4.00	4.00	A-
LAW	520	003	Contracts	Albert Choi	4.00	4.00	4.00	A-
LAW	540	001	Introduction to Constitutional Law	Daniel Halberstam	4.00	4.00	4.00	A
LAW	593	013	Legal Practice Skills I	Timothy Pinto	2.00		2.00	H
LAW	598	013	Legal Pract:Writing & Analysis	Timothy Pinto	1.00		1.00	H
<b>Term Total</b>					<b>GPA: 3.800</b>	<b>15.00</b>	<b>12.00</b>	<b>15.00</b>
<b>Cumulative Total</b>					<b>GPA: 3.800</b>	<b>12.00</b>	<b>15.00</b>	
<b>Winter 2022 (January 12, 2022 To May 05, 2022)</b>								
LAW	530	002	Criminal Law	Luis CdeBaca	4.00	4.00	4.00	B
LAW	580	001	Torts	Kyle Logue	4.00	4.00	4.00	A
LAW	594	013	Legal Practice Skills II	Margaret Hannon	2.00		2.00	H
LAW	630	001	International Law	Gregory Fox	3.00	3.00	3.00	A
<b>Term Total</b>					<b>GPA: 3.636</b>	<b>13.00</b>	<b>11.00</b>	<b>13.00</b>
<b>Cumulative Total</b>					<b>GPA: 3.721</b>	<b>23.00</b>	<b>28.00</b>	

Continued next page >

This transcript is printed on special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required.

A BLACK AND WHITE TRANSCRIPT IS NOT AN ORIGINAL



Control No: E196660101

Issue Date: 05/30/2023

Page 2

# The University of Michigan Law School

## Cumulative Grade Report and Academic Record

Name: Sweeney, Nicholas Armig  
Student#: 48134572



*Paul R. Sweeney*  
University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Towards Program	Grade
<b>Fall 2022 (August 29, 2022 To December 16, 2022)</b>								
LAW	664	002	European Union Law	Daniel Halberstam	3.00	3.00	3.00	A
LAW	669	002	Evidence	David Moran	3.00	3.00	3.00	P
LAW	900	393	Research	Patrick Barry	1.00	1.00	1.00	S
LAW	920	001	Civil-Criminal Litigation Cln	Mira Edmonds	4.00	4.00	4.00	A+
				Victoria Clark				
LAW	921	001	Civil-Criminal Litig Cln Sem	Mira Edmonds	3.00	3.00	3.00	A-
				Victoria Clark				
<b>Term Total</b>				<b>GPA: 4.030</b>	<b>14.00</b>	<b>10.00</b>	<b>14.00</b>	
<b>Cumulative Total</b>				<b>GPA: 3.815</b>		<b>33.00</b>	<b>42.00</b>	
<b>Winter 2023 (January 11, 2023 To May 04, 2023)</b>								
LAW	601	001	Administrative Law	Nina Mendelson	4.00	4.00	4.00	A-
LAW	643	001	Crim Procedure: Bail to Post Conviction Review	Barbara Mcquade	3.00	3.00	3.00	B+
LAW	797	001	Model Rules and Beyond	Bob Hirshon	3.00	3.00	3.00	A-
LAW	900	075	Research	Daniel Halberstam	2.00	2.00	2.00	A
LAW	980	424	Advanced Clinical Law	Mira Edmonds	2.00	2.00	2.00	A+
<b>Term Total</b>				<b>GPA: 3.742</b>	<b>14.00</b>	<b>14.00</b>	<b>14.00</b>	
<b>Cumulative Total</b>				<b>GPA: 3.793</b>		<b>47.00</b>	<b>56.00</b>	
<b>Fall 2023 (August 28, 2023 To December 15, 2023)</b>								
Elections as of: 05/30/2023								
LAW	612	001	Alternative Dispute Resolution	Allyn Kantor	3.00			
LAW	641	001	Crim Just: Invest&Police Prac	Ekow Yankah	4.00			
LAW	677	001	Federal Courts	Gil Seinfeld	4.00			
LAW	780	001	Human Rights: Themes and Var	Steven Ratner	3.00			

This transcript is printed on special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required.

A BLACK AND WHITE TRANSCRIPT IS NOT AN ORIGINAL



Control No: E196660101

Issue Date: 05/30/2023

Page 3

# The University of Michigan Law School

## Cumulative Grade Report and Academic Record

Name: Sweeney, Nicholas Armig  
Student#: 48134572



*Paul R. Sweeney*  
University Registrar

End of Transcript  
Total Number of Pages 3



This transcript is printed on special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required.

A BLACK AND WHITE TRANSCRIPT IS NOT AN ORIGINAL

## University of Michigan Law School Grading System

### Honor Points or Definitions

Through Winter Term 1993	Beginning Summer Term 1993
A+ 4.5	A+ 4.3
A 4.0	A 4.0
B+ 3.5	A- 3.7
B 3.0	B+ 3.3
C+ 2.5	B 3.0
C 2.0	B- 2.7
D+ 1.5	C+ 2.3
D 1.0	C 2.0
E 0	C- 1.7
	D+ 1.3
	D 1.0
	E 0

#### Other Grades:

- F Fail.
- H Top 15% of students in the Legal Practice courses for students who matriculated from Spring/Summer 1996 through Fall 2003. Top 20% of students in the Legal Practice courses for students who matriculated in Spring/Summer 2004 and thereafter. For students who matriculated from Spring/Summer 2005 through Fall 2015, "H" is not an option for LAW 592 Legal Practice Skills.
- I Incomplete.
- P Pass when student has elected the limited grade option.\*
- PS Pass.
- S Pass when course is required to be graded on a limited grade basis or, beginning Summer 1993, when a student chooses to take a non-law course on a limited grade basis.\* For SJD students who matriculated in Fall 2016 and thereafter, "S" represents satisfactory progress in the SJD program. (Grades not assigned for LAW 970 SJD Research prior to Fall 2016.)
- T Mandatory pass when student is transferring to U of M Law School.
- W Withdrew from course.
- Y Final grade has not been assigned.
- \* A student who earns a grade equivalent to C or better is given a P or S, except that in clinical courses beginning in the Fall Term 1993 a student must earn a grade equivalent to a C+ or better to be given the S.

MACL Program: HP (High Pass), PS (Pass), LP (Low Pass), F (Fail)

Non-Law Courses: Grades for these courses are not factored into the grade point average of law students. Most programs have customary grades such as A, A-, B+, etc. The School of Business Administration, however, uses the following guides: EX (Excellent), GD (Good), PS (Pass), LP (Low Pass) and F (Fail).

### Third Party Recipients

As a third party recipient of this transcript, you, your agents or employees are obligated by the Family Rights and Privacy Act of 1974 not to release this information to any other third party without the written consent of the student named on this Cumulative Grade Report and Academic Record.

### Official Copies

An official copy of a student's University of Michigan Law School Cumulative Grade Report and Academic Record is printed on a special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required. A black and white is not an original. Any alteration or modification of this record or any copy thereof may constitute a felony and/or lead to student disciplinary sanctions.

The work reported on the reverse side of this transcript reflects work undertaken for credit as a University of Michigan law student. If the student attended other schools or colleges at the University of Michigan, a separate transcript may be requested from the University of Michigan, Office of the Registrar, Ann Arbor, Michigan 48109-1382.

Any questions concerning this transcript should be addressed to:

Office of Student Records  
University of Michigan Law School  
625 South State Street  
Ann Arbor, Michigan 48109-1215  
(734) 763-6499





Rashida Y. Douglas

Registrar; Director

Office of Student Records, 300 Hutchins Hall

625 S. State Street, Ann Arbor, MI 48109-1215

Phone: 734.763.6499 | Fax: 734.936.1973

Email: lawrecords@umich.edu

Memo: 2018 - 2022 Class Ranking

To whom it may concern:

The University of Michigan Law School does not rank its current students; however, it does rank graduates upon completion of their degrees. As the GPAs that correspond to particular percentages do change slightly from year to year, we are providing averages for the graduating classes from the past five academic years (2018 - 2022). Thus, the following information may assist you in evaluating candidates:

- Students with a cumulative GPA of 4.010 and above finished in the top 1%
- Students with a cumulative GPA of 3.941 and above finished in the top 2%
- Students with a cumulative GPA of 3.921 and above finished in the top 3%
- Students with a cumulative GPA of 3.884 and above finished in the top 5%
- Students with a cumulative GPA of 3.820 and above finished in the top 10%
- Students with a cumulative GPA of 3.772 and above finished in the top 15%
- Students with a cumulative GPA of 3.735 and above finished in the top 20%
- Students with a cumulative GPA of 3.700 and above finished in the top 25%
- Students with a cumulative GPA of 3.650 and above finished in the top 33%
- Students with a cumulative GPA of 3.563 and above finished in the top 50%

During the Winter 2020 term, a global pandemic required significant changes to course delivery. All courses used mandatory Pass/Fail grading. Consequently, the students who graduated in the May 2020 term graduated with five semesters of graded courses, rather than six.

A handwritten signature in black ink, appearing to read 'Rashida Y. Douglas'.

Rashida Y. Douglas  
Law School Registrar & Director for the Office of Student Records

June 11, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

It is with great enthusiasm that I write this recommendation for Nicholas ("Nick") Sweeney. Nick was my student during the Fall 2022 semester in the Civil-Criminal Litigation Clinic ("CCLC") at Michigan Law. The CCLC is a general litigation clinic in which law students work in teams of two on a variety of civil and criminal legal matters. I supervised Nick's case work and taught him in the seminar component of the clinic. He performed outstandingly well in all aspects of the course. Nick is a smart, detail-oriented, and thoughtful young man who I have no doubt would be an excellent judicial clerk.

I supervised Nick and his partner on a challenging eviction matter, an affirmative housing case, and a Child Protective Services central registry appeal. Nick earned an incredibly rare A+ on his casework, in recognition of his consistent dedication, hard work, and excellent work product. He and his partner truly took ownership of their cases, going above and beyond for all of their clients.

In the eviction matter, Nick and his partner worked hard to earn their client's trust, which was not immediately forthcoming due to her past trauma and mental health struggles. They worked effectively with their client's mental health caseworker to harmonize efforts on behalf of their client. Nick and his partner wrote a strong reasonable accommodation letter, and Nick also wrote two excellent legal memos that informed our strategy in the case. The legal memos reflected careful legal research and analysis, as well as elegant writing.

Nick and his partner also spent months preparing for a relatively complex administrative hearing in the CPS case. Nick chose to stay on with the clinic past the end of the semester to represent his client at the hearing. That decision reflected his dedication both to his client and to taking every opportunity to improve his skills as a lawyer. The hearing ended up taking five hours during which Nick and a new student partner conducted several lengthy direct and cross examinations, as well as delivering effective opening and closing statements. I was thoroughly impressed with Nick's performance during the hearing, as well as the more than 100 hours that he spent in preparation. Nick shows great promise as a trial attorney, should that be the path that he chooses to pursue. As part of the seminar component of the clinic, our students conduct an entire mock jury trial from motions in limine through verdict. Nick performed very strongly in this setting as well. Once again, his thorough preparation was apparent, as was his capacity for self-reflection during subsequent discussions.

Nick is open-minded and incorporates feedback effectively. He is a real team player and an all-around pleasure to work with. In sum, I have no hesitations in recommending Nick for a position as your clerk, and I urge you to give serious consideration to his application.

Sincerely,

Mira Edmonds  
Clinical Assistant Professor of Law

Mira Edmonds - edmondm@umich.edu

UNIVERSITY OF MICHIGAN LAW SCHOOL  
625 South State Street  
Ann Arbor, Michigan 48109-1215

**Daniel H. Halberstam**  
Eric Stein Collegiate Professor of Law  
Director, European Legal Studies

May 28, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am delighted to write in strong support of Nicholas Sweeney, who has applied for a clerkship in your chambers. Nick is an exceptionally talented and versatile young lawyer, who writes well and consistently analyzes difficult legal arguments with great care. I have no doubt he will make an excellent clerk in any chambers he is invited to join.

I first came to know Nick a couple of years ago when he took my constitutional law course as a first-year student. He was among the top five students of a very strong section. Nick was consistently prepared and came to class having digested the cases, ready to engage with productive questions and comments. I could always rely on him for our discussions and mock arguments, in which he performed admirably. Nick generally stood out for his mature analysis, especially when it came to politically difficult cases. His exam did not disappoint. It was well written and astutely analyzed all problems effectively – from Commerce Clause and “dormant” Commerce Clause questions to Section 5 of the 14th Amendment and stare decisis. He easily earned an “A” in that class.

As you might imagine, I was truly pleased to see Nick enroll in my course on European Union Law this past fall – essentially an introductory course on EU constitutional structure and rights. As it turns out, Nick speaks several languages, including French, Spanish, and Armenian, and has spent considerable time abroad, teaching in France and volunteering in Armenia. Nick was a quick study in EU law and in making effective constitutional arguments with regard to this foreign legal system. He chose to write an independent research paper for the course, which focused on minority representation rights in relation to secession. Within the confines of this term paper, his investigation deftly combined international law, EU law, and the distinctly European approach to fundamental rights analysis for a novel approach to secession claims. Again, Nick readily earned an “A”.

Given Nick’s academic performance and utmost professionalism in his general conduct, I have agreed this term to supervise an independent study in which he seeks to write a law review Note. Nick has provisionally chosen to consider the constitutional limits of the President’s power to withdraw from certain international agreements in the absence of Congressional approval. So far, we have met to discuss Nick’s proposed outline and thesis with the aim of refining the project to crystallize his original contribution. Nick has already impressed me by the amount of reading he has done on the project in developing a possible thesis. And he has been exceptionally responsive to my suggestions and conscientious in following through with yet further research and obtaining additional feedback from experts in the field.

Next to his interest in international law and human rights, Nick is also passionate about litigation, and in the near-term aspires to a position with the government (likely the Department of Justice) in litigation – be it civil or criminal. He’s been especially taken by the fascinating and varied work of a U.S. Attorney’s Office from his time last summer as an intern in the Office of the U.S. Attorney for the Southern District of New York. With any luck, he may be joining that office down the road as a junior attorney.

In summary, Nick is a most promising, earnest, and thorough young lawyer with a bright future. He is also highly congenial and professional with a broad set of interests. I recommend him to you most highly and without qualification. Please do not hesitate to contact me with any further questions you may have.

Yours sincerely,

Daniel H. Halberstam

Daniel Halberstam - dhalber@umich.edu - 734-763-4408



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

*The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007*

March 22, 2023

To whom it may concern,

I am writing to recommend Nicholas Sweeney as a judicial law clerk. I have been an Assistant United States Attorney in the Southern District of New York for five years and am currently in the Money Laundering and Transnational Criminal Enterprises Unit. I served as one of Nick's two supervising attorneys during his internship at the U.S. Attorney's Office for the Southern District of New York from June to August 2022.

Nick and I worked closely throughout his internship, speaking almost daily. Nick is friendly and collegial, and I enjoyed working with him. He has a good-humored and enthusiastic attitude toward his work, and he demonstrated intellectual curiosity and a keen desire to learn. Nick was never shy about coming to my office to ask insightful questions about criminal procedure, research techniques, and office policies.

As an intern in our office, Nick demonstrated diligence, critical-thinking, and commitment. Over the summer, I assigned Nick a variety of legal research tasks to assist me in preparing for an upcoming money laundering trial and to address legal issues that arose in various financial investigations, including: the admissibility of voice identification evidence; the admissibility of various hearsay statements pursuant to the co-conspirator, statement against penal interest, and effect on the listener exceptions; the contours of a "good faith basis" to support cross examination; and an analysis of the venue requirements for bank fraud and false statements to a financial institution. Nick's research was thorough, and he provided thoughtful and concise analysis of the relevant cases. With respect to the venue analysis, Nick not only analyzed the relevant caselaw but also adeptly applied his analysis to the particular facts of our investigation to assist me in brainstorming potential venue theories for the case. Nick was able to handle open-ended and specific research questions, and he periodically checked in with me on his own initiative and asked follow-up questions as necessary to ensure that his research and analysis were focused on the relevant issues. Nick also drafted an opposition to a motion for a compassionate release and a sentencing letter for two different narcotics cases that were well-researched and written clearly, requiring minimal revisions. Nick responsibly set his own deadlines and returned assignments in a timely manner.

Nick demonstrated a strong work ethic and genuine enthusiasm. Nick took every opportunity offered to attend court proceedings, proffer sessions, or other meetings, and he attended numerous preparation sessions with witnesses for my upcoming trial, including volunteering to attend sessions on Friday evenings with a challenging witness that required an interpreter. Nick demonstrated initiative by conducting factual research to track down suppliers and distributors of prescription drugs relevant to the case, which helped us identify potential witnesses for trial and



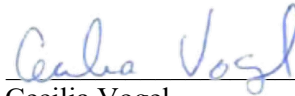
resolve important factual issues in the weeks before trial. Ultimately, Nick was so enthusiastic about participating in trial preparation that he extended his internship by two weeks.

I was particularly struck by Nick's commitment to work in public service. Over multiple conversations during the summer, Nick expressed that he was keen to work in the public interest as an attorney, and we discussed what steps he could take during law school to prepare himself for that work and different opportunities he could consider after law school to pursue a public interest career. Based on my recent conversations with Nick, I have learned that he continues to take steps to prepare himself for a public interest career, including participating in a clinic in which he examined multiple witnesses in an administrative hearing and securing an internship with a human rights organization in Geneva.

It was a true pleasure working with Nick, and I strongly recommend him to you as a clerk. I hope you will consider him for a clerkship position, and I would be happy to answer any further questions.

Sincerely,

by:



Cecilia Vogel  
Assistant United States Attorney  
(212) 637-1084  
Cecilia.Vogel@usdoj.gov

**WRITING SAMPLE COVERSHEET**

This writing sample below is a memorandum I wrote to my supervising AUSA while a legal intern at the U.S. Attorney's Office, Southern District of New York. My supervising AUSA advised me that the memo should be written as a draft of the letter brief he was required to submit to the Court. I received permission from the U.S. Attorney's Office to use this memorandum as a writing sample.

I adhere to SDNY conventions for citations where applicable and defer to Bluebook citation style in all other cases. In conformity with office policy at the U.S. Attorney's Office, I have removed the defendant's name. I have not received outside editing on this work.

TO: Daniel Wolf, Assistant U.S. Attorney, Southern District of New York

FROM: Nicholas Sweeney

DATE: June 21, 2022

RE: Whether the base offense level for the Defendant's 18 U.S.C. § 1594(c) conviction was correctly calculated by the presentence investigation report.

**I. INTRODUCTION**

The question posed is whether, under the United States Sentencing Guidelines (“U.S.S.G.” or the “Guidelines”), a defendant convicted of a sex trafficking conspiracy pursuant to 18 U.S.C. § 1594(c) should be assigned the enhanced base offense level of 34, as he would be if convicted of the substantive offense defined in 18 U.S.C. § 1591(b). In this case, the enhanced base offense level of 34 should be assigned.

On February 26, 2019, the Defendant was charged in a one-count indictment under § 1594(c) for conspiring to commit sex trafficking by force, fraud, or coercion in violation of §§ 1591(a)(1), (a)(2), and (b). *See* Indictment (19 Cr. 131) ¶ 1. On June 11, 2021, the Defendant was convicted by a jury as charged. The Final Presentence Report (PSR) determined the Defendant's base offense level to be 34 according to U.S.S.G. § 2G1.1(a)(1). The Defendant objected, citing the Ninth Circuit Case, *United States v. Wei Lin*, 841 F.3d 823 (9th Cir. 2016).

The reasoning from *Wei Lin* should not be endorsed here. First, as other circuits have observed, the plain meaning of relevant Sentencing Guidelines provisions requires that sex trafficking conspiracies be treated in the same manner as their substantive offenses. Second, other circuits have noted that lowering the base offense level of a sex trafficking conspiracy compared to the that of a substantive offense would lead to absurd and structurally inconsistent results. Finally, all cases addressing this issue in this District have rejected *Wei Lin* and imposed the enhanced base offense level.

## II. LEGAL BACKGROUND

Ordinarily, the base offense level for a federal crime is determined by identifying the appropriate Guidelines provision in Chapter 2 of the United States Sentencing Guidelines. *See* U.S.S.G. § 1B1.2(a). However, when the crime is a conspiracy, a judge must begin by looking to § 1B1.2: “If the offense involved a conspiracy, attempt, or solicitation, refer to § 2X1.1 (Attempt, Solicitation, or Conspiracy) as well as the guideline referenced in the Statutory Index for the substantive offense.” *United States v. Sims*, 957 F.3d 362, 363 (3d Cir. 2019), *cert. denied*, 141 S.Ct. 404; U.S.S.G. § 1B1.2(a). Conspiracy under 18 U.S.C. 1594(c) is not listed in the Statutory Index, so courts have turned directly to § 2X1.1 to assess the base offense level.

Section 2X1.1(a) sets the base level for Conspiracy as “[the level] from the guideline for the substantive offense, plus any adjustments from such guideline for any intended offense conduct that can be established with reasonable certainty.” Here, the Defendant was convicted of conspiring to violate 18 U.S.C. §§ 1591(a)(1), (a)(2), and (b)(1), which describe the offense of “[s]ex trafficking of children or by force, fraud, or coercion.” *See* PSR (19 Cr. 131) ¶ 26. As described in the indictment, the Defendant’s use of force and coercion was directed uniquely toward Victim-2. *See* Indictment ¶ 3(c). If the victim were a minor, then the base offense level corresponding to the substantive offense would be given by U.S.S.G. § 2G1.3. Since the victim of the Defendant’s crime was not a minor, however, the provision associated with the Defendant’s substantive offense is U.S.S.G. § 2G1.1, which sets a base offense level of 34 if the “offense of conviction” is designated by § 1591(b)(1), or 14 otherwise. U.S.S.G. 2G1.1(a)(1–2).

Courts have disagreed about which base offense level applies to conspiracies evaluated through § 2G1.1 when there is a cross-reference with § 2X1.1(a). *Wei Lin*, 841 F.3d 823 (9th Cir. 2016); *Sims*, 957 F.3d at 362; *United States v. Carter*, 960 F.3d 1007 (8th Cir. 2020), *cert.*

*denied*, 141 S. Ct. 835 (2020); *United States v. Valdez*, No. 19-12522, 2021 WL 3478402 at \*1 (11th Cir. Aug. 9, 2021). In *Wei Lin*, the defendant pled guilty to a conspiracy count, 18 U.S.C. § 1594(c). *Wei Lin*, 841 F.3d at 825. The court held that this result did not warrant the heightened base offense level of 34 in § 2G1.1. *Id.* at 823. First, the court reasoned that it would be improper to apply § 2G1.1(a)(1) given that the text of § 2G1.1(a)(1) expressly requires an “offense of conviction” pursuant to § 1591(b)(1), and the conviction in this case was under § 1594(c). *Id.* at 826. The court also considered to legislative history. Judge Farris identified that the higher base offense level in § 2G1.1(a)(1) was added in response to Congress’s adoption of the fifteen-year mandatory minimum in 18 U.S.C. § 1591(b)(1), ostensibly linking the heightened offense level with the substantive sex trafficking offense. *Id.* at 827. He also argued that since the Sentencing Commission “knew how to require [a conduct-based] comparison explicitly, and did not do so,” a literal reading of the § 1591(b)(1) conviction requirement is appropriate. *Id.*

However, circuit courts that have considered this issue since *Wei Lin* have concluded oppositely. *Sims*, 957 F.3d at 362; *Carter*, 960 F.3d at 1007; *Valdez*, 2021 WL 3478402 at \*1. In *Sims*, the defendant also pled guilty to 18 U.S.C. § 1594(c), but the Third Circuit held that the heightened base offense level in § 2G1.1(a)(1) applied. *Sims*, 957 F.3d at 362. The Court argued that § 2G1.1 “cannot be interpreted in isolation” of § 2X1.1., *Id.* at 364, and determined that when the two provisions are read together, the base level for a sex trafficking conspiracy is simply that of the substantive offense. *Id.* at 364-65. Judge Hardiman also recognized the “absurd results” that would follow from setting a substantially lower base offense level for conspiracies under 2X1.1 than for their substantive offenses. *Id.* at 364. Likewise, in *Carter*, the Eighth Circuit imposed the heightened base offense level for three defendants who pleaded guilty to violations of 18 U.S.C. § 1594(c). *Carter*, 960 F.3d at 1007. While reiterating a desire

to avoid “absurd results,” *Id.* at 1014, and emphasizing that § 2G1.1 must be read “in light of” § 2X.1.1, *Id.*, the court added that commentary in Chapter 1 of the Guidelines supported an understanding that a conspiracy is to be accorded the same base offense level as its corresponding substantive offense. *Id.*; U.S.S.G. § 1B1.3, cmt. n.7. Finally, in *Valdez*, the defendant pled guilty to conspiring to sexually traffic a minor under § 1594(c). *Valdez*, 2021 WL 3478402 at \*1. Because the victim was between the ages of 14 and 18 and the offense did not involve force, fraud, or coercion, the underlying substantive offense was § 1591(b)(2). *Id.* at \*4. Similarly to *Sims* and *Carter*, The Eleventh Circuit held that the base offense level for § 1591(b)(2)—a level of 30—was proper given the plain meaning and commentary of the applicable guidelines. *Id.* at \*5.

### **III. DISCUSSION**

The heightened base offense level advocated for by the Third, Eighth, and Eleventh Circuits should be applied here for three independent reasons. First, such a reading better conforms with the text of § 2X1.1 and § 2G1.1. Second, it guards against the absurd results that would follow from violating the structural integrity of the United States Sentencing Guidelines and the Criminal Code. Third, this interpretation is consistent with existing case law in this District.

#### **A. A Textual Analysis of § 2X1.1 and § 2G1.1 Favors an Enhanced Base Offense Level**

A textual examination of U.S.S.G. §§ 2X1.1 and 2G1.1 demonstrates that 18 U.S.C. § 1594(c) convictions must receive the heightened base offense of 34. In the case of Conspiracy, § 2X1.1(a) states that the base offense level is “the base offense level from the guideline for the substantive offense, plus any adjustments from such guideline or any intended offense conduct

that can be established with reasonable certainty.” U.S.S.G. § 2X1.1(a). Generally, this means that the base offense level for a conspiracy “will be the same as that for the substantive offense.” *Id.* cmt. n.2. For offenses involving the “Promot[ion] [of] a commercial sex act or prohibited sexual contact with an individual other than a minor,” § 2G1.1 provides that the base offense level is 34 if the “offense of conviction” is 18 U.S.C. 1591(b)(1), or 14 otherwise. U.S.S.G. § 2G1.1(a)(1). By (1) reading § 2G1.1 together with § 2X1.1, (2) examining the Guidelines’ definition for “offense of conviction,” and (3) placing interpretive value in the commentary of the Guidelines, it is clear that a base offense level of 34 must be applied. The purported intent of the Sentencing Commission should not outweigh what the plain meaning of the Guidelines indicates.

### **1. Sections 2X1.1 and 2G1.1 Must Be Read Together**

Reading § 2G1.1 in the context of § 2X1.1 clarifies that the base offense level enhancement for § 1591(b)(1) also applies for § 1594(c). As a starting point, courts recognize that “as with statutory language, the plain and unambiguous language of the Sentencing Guidelines affords the best recourse for their proper interpretation.” *United States v. Millar*, 79 F.3d 338, 346 (2d Cir. 1996). In doing so, all terms in the Guidelines should be given their “ordinary meanings.” *United States v. Mullings*, 330 F.3d 123, 124-35 (2d Cir. 2003). Yet, to fully capture the plain meaning of a statute, courts must “[Look] to the statutory scheme as a whole and [place] the particular provision within the context of the statute.” *Saks v. Franklin Covey Co.*, 316 F.3d 337, 345 (2d Cir. 2003) (quoting *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988)). The Second Circuit has used this rule to interpret the plain meaning of individual Guidelines provisions based on how those provisions function within the context and structure of the Guidelines as a whole. *See United States v. Manas*, 272 F.3d 159, 167 (2d Cir.

2001), *cert. denied*, 537 U.S. 1176 (2003); *United States v. Kennedy*, 233 F.3d 157, 163 (2d Cir. 2000).

Here, in order to ensure that the structure and scheme of the Guidelines are upheld, § 2G1.1 and § 2X1.1 must be read together. *Carter*, 960 F.3d at 1014; *Sims*, 967 F.3d at 364; *Valdez*, 2021 WL 3478402 at \*5. *Wei Lin* did not acknowledge this and instead relied on what appeared to be a “straightforward interpretation of U.S.S.G. § 2G1.1(a)(1)” considered on its own. *Wei Lin*, 841 F.3d at 826. However, § 2G1.1(a)(1) must not be considered in isolation because Chapter 1, which provides “General Application Principles,” expressly directs the judge to apply § 2X1.1 before any other offense-related provisions. U.S.S.G. § 1B1.2; *see also Sims* 967 F.3d at 363; *Valdez*, 2021 WL 3478402 at \*4.

Examining § 2G1.1 and § 2X1.1 together, the plain and unambiguous language of § 2X1.1 expresses that the base offense level is that of the “substantive offense,” where the substantive offense is “the offense that the defendant was convicted of soliciting, attempting or conspiring to commit.” U.S.S.G. § 2X1.1(a) & cmt. n.2. In this case, the Defendant was convicted of conspiring to commit sex trafficking in violation 18 U.S.C. §§ 1591(a)(1), (a)(2), and (b). *See* PSR ¶ 26. Thus, § 18 U.S.C. 1591(b)(1) qualifies as a substantive offense. Since § 2G1.1(a)(1) designates that § 18 U.S.C. 1591(b)(1) convictions have a base offense level of 34, the Defendant’s § 18 U.S.C. § 1594(c) conviction should also receive a base offense level of 34.

Accepting that § 2X1.1 and § 2G1.1 must be read together, the term “base offense level” provides another reason for directly applying the base offense level of the substantive offense. Section 2X1.1 does not “instruct courts to apply the ‘Guidelines Section’” relating to the substantive offense. *Sims*, 957 F.3d at 364. Rather, it “requires courts to apply the ‘base offense level’ for the substantive offense.” *Id.* (quoting U.S.S.G. § 2X1.1(a)). As a result, the base



offense level of 34 should be directly applied for § 1594(c) convictions without walking through a fully independent application of § 2G1.1.

## **2. Definition of “Offense of Conviction”**

The definition of “offense of conviction” in the Sentencing Guidelines also extends the enhancement in § 2G1.1(a)(1) to the Defendant’s conviction under 18 U.S.C. § 1594(c). The Second Circuit recognizes that when a term from a statute or the Guidelines is “otherwise defined,” the definition given may outweigh the term’s ordinary meaning. *United States v. Martinez-Santos*, 184 F.3d 196 (2d Cir. 1999).

Here, § 1B1.2(a) indicates that the “offense of conviction” is “the offense conduct charged in the count of the indictment or information of which the defendant was convicted.” U.S.S.G. § 1B1.2(a). In light of this definition, § 2G1.1(a)(1) should be read to require a base offense level of 34, so long as the defendant’s conduct matches the conduct proscribed by § 1591(b)(1). *Sims*, 957 F.3d at 365; *United States v. Li*, No. 1:12-CR-00012-2, 2013 WL 638601 at \*2 (D.N. Mar. I. Feb. 21, 2013). In *Sims*, the Eighth Circuit held that the enhanced base offense level in § 2G1.1(a)(1) was appropriate for a § 1594(c) conviction because the defendant’s conduct was “identical to that proscribed in § 1591(b)(1).” 957 F.3d at 365. Similarly, in *Li*, the district court held that because “a conspiracy to violate Section 1591 involves the same conduct as a substantive violation,” the base offense level of the substantive offense should apply. *Li*, 2013 WL 638601 at \*3.

Here, the Defendant’s conduct was also identical to what is proscribed in § 1591(b)(1). The relevant conduct covered by § 1591(b)(1) involves the “[s]ex trafficking of children or by force, fraud, or coercion.” The Defendant’s indictment for his count of conviction indicates that his conduct matches the description of sex trafficking by force and coercion articulated in §

1591(b)(1). The Defendant forced and coerced “Victim-2” to “engage in commercial sex acts” through physical violence, threats of deadly force, and the conditional withholding of heroin, a drug that the Defendant knew Victim-2 was addicted to. *See* Indictment ¶ 3(c). Thus, the Defendant should be allotted the enhanced base offense level, corresponding with § 2G1.1(a)(1).

Still, the court in *Wei Lin* stated that the description of the “offense of conviction” in terms of “offense conduct” in § 1B1.2(a) is not a “general definition.” 841 F.3d at 826. The court in accepted that this conduct-based definition applied to the determination of the proper “offense guidelines section.” *Id.* However, the court refused to extend the conduct-based definition to provisions where the term “offense of conviction” pertained to a specific statute and instead advocated for a direct “matching exercise” with the statute listed in the judgment for the defendant. *Id.*

With that said, the argument in *Wei Lin* for limiting the “offense of conviction” definition is not persuasive because there is a “presumption of consistent usage when interpreting the Sentencing Guidelines.” *Sims*, 957 F.3d at 365 (quoting *Pereira v. Sessions*, 138 S. Ct. 2105, 2115 (2018)). Moreover, the phrase “offense of conviction” has been broadly interpreted to extend to “all conduct in furtherance of the offense of conviction.” *Id.* (citing *United States v. Murillo*, 933 F.2d 195, 199 (3d Cir. 1991)).

### **3. Guidelines Commentary**

Third, the commentary following § 1B1.3 confirms that conspiracies are to be assigned the same base offense level as their substantive offenses. The Supreme Court has held that “commentary that interprets or explains a guideline is authoritative unless it violates the Constitution or a federal statute, or is inconsistent with, or entails a plainly erroneous reading of, the guideline.” *Stinson v. United States*, 508 U.S. 36, 38 (1993). Here, § 1B1.3, comment 7

states: “[A]n express direction to apply a particular factor only if the defendant was convicted of a particular statute includes the determination of the offense level where the defendant was convicted of a conspiracy . . . .” Thus, even ignoring the interplay between § 2X1.1 and § 2G1.1 and the conduct-based definition of “offense of conviction,” courts have recognized that there is still conclusive support for applying a base offense level of 34 to conspiracies under § 1594(c). *Carter*, 960 F.3d at 1014; *Valdez*, 2021 WL 3478402 at \*5.

**4. Unambiguous Plain Language Negates *Wei Lin*’s Reliance on the Sentencing Commission’s Intent**

*Wei Lin*’s reliance on the Sentencing Commission’s intent in adding § 2G1.1(a)(1) to the Guidelines should not sway the Court’s reasoning in this case. In *Wei Lin*, the court noted that the defendant’s guilty plea to 18 U.S.C. § 1594(c) did not carry a mandatory minimum. *Wei Lin*, 841 F.3d at 825. It then reasoned because § 2G1.1(a)(1) was “created in direct response” to Congress’s inclusion of a 15-year mandatory minimum in 18 U.S.C. § 1591(b)(1), the Sentencing Commission did not intend for the enhancement in § 2G1.1(a)(1) to be activated without the presence of the mandatory minimum. *Id.* at 827. Separately, the Ninth Circuit inferred that the Commission’s failure to make explicit a conduct-based assessment for the base offense level, when it knew how to do so, weighed in favor of a strict interpretation of § 2G1.1(a)(1). *Id.*

In spite of these arguments, the courts need not consider other if interpretive sources if “language [of a statute] is plain and its meaning is sufficiently clear.” *Novak v. Kasaks*, 261 F.3d 300, 310 (2d Cir. 2000), *cert. denied*, 531 U.S. 1012 (2000); *see also Carter*, 960 F.3d at 1014. In *Carter*, the Eighth Circuit held that considerations regarding the Sentencing Commission’s intentions were impertinent to whether § 1594(c) received an enhanced base offense level since

there was “no ambiguity” in how the text of § 2X1.1 required § 2G1.1(a)(1) to be applied. 960 F.3d at 1014. Likewise, for the reasons described thus far in this case, the text of the Guidelines unambiguously requires the court to assess the Defendant’s § 1594(c) conviction as having the same base offense level as § 1591(b)(1). Thus, concerns about the Commission’s intent have little import.

In summary, the interplay between § 2G1.1 and § 2X1.1, the definition of “offense of conviction,” and the commentary in § 1B1.3 establish that the enhanced base offense level of 34 must apply to the Defendant’s conviction under § 1594(c). Speculations about the Sentencing Commission’s intent should not override these features in the plain text of the Guidelines.

**B. An Enhanced Base Offense Level Preserves the Structural Integrity of the Sentencing Guidelines and the Criminal Code**

A base offense level assignment of 34 for the Defendant’s § 1594(c) conviction is appropriate because it avoids structural inconsistencies that would follow from treating sex trafficking conspiracies differently than their substantive offenses. If an interpretation of the Guidelines entails absurd results, these results should weigh against such an interpretation. *United States v. Pope*, 554 F.3d 240, 246 (2d Cir. 2009). Applying the § 2G1.1(a)(2) base offense level of 14 to § 1594(c) convictions would lead to absurd results for two reasons. First, it would generate significantly lower Guidelines recommendations for sex trafficking conspiracies than for less pernicious crimes. Second, it would improperly group § 1594(c) with nonviolent offenses that, contrary to § 1594(c), set maximum terms of imprisonment under Title 18.

**1. Wei Lin Violates the Structural Integrity of the Sentencing Guidelines**

The Defendant should not be assigned the base offense level of 14 for his § 1594(c) conviction because this would impose a lower sentence than is typical for less severe offenses.

An interpretation of a statute should not be enforced if it is “fundamentally inconsistent” with the structure of the statute. *Off. & Pro. Emp. Int’l Union v. NLRB*, 981 F.2d 76, 81 (2d Cir. 1992). This rule pertains to the Guidelines because the interpretation of Guidelines should consider the “basic rules of statutory construction.” *United States v. Mullings*, 330 F.3d 123, 124 (2d Cir. 2003).

Applying a base offense level of 14 in the Defendant’s case would be fundamentally inconsistent with the structure of the Guidelines. For example, labor trafficking offenses are given a standard base offense level of 22 under the Guidelines. U.S.S.G. § 2H4.1(a)(1). Accordingly, based on the reasoning of *Wei Lin*, someone with the Defendant’s criminal history who is convicted of labor trafficking would receive a sentence of between 84 and 105 months for labor trafficking, but only a sentence of between 37 and 46 months for a sex trafficking conspiracy. *See* PSR ¶ 172 (determining that the Defendant has a criminal history of VI). Such a result would violate the structure and purpose of the Guidelines since sex trafficking is “an especially pernicious form of labor trafficking.” *Sims* 957 F.3d at 364 (determining that it would be “inconceivable” that the Sentencing Commission would intend to punish forced labor conspiracies more than twice as harshly as sex trafficking conspiracies). In *Sims*, the court imposed a base offense level of 34, paying special attention to the egregiousness of the defendant’s conduct in comparison to a labor trafficking offense. *Id.* Specifically, the defendant “contributed to the forced prostitution, abuse, and drug addiction of numerous young women.” *Id.* Moreover, *Sims* was a “‘respect[ed]’ member of a gang that ‘sexed’ women into its employ by forcing them to have sex with a succession of gang members.” *Id.*

Here, the Defendant’s conduct is similarly egregious. He coerced “Victim 2” into performing “commercial sex acts” by “physically assaulting” her, “threatening” her,

“brandishing a dangerous weapon” at her, and “withholding heroin from her . . . with knowledge and understanding that [she] was addicted to heroin.” *See* Indictment ¶ 3(c). Hence, the holding from *Wei Lin* should not apply here, and the Defendant should receive the base offense level of 34, which is consistent in severity with the general structure of the Guidelines.

## 2. *Wei Lin* Violates the Structural Integrity of Title 18

Second, the Defendant should not be assigned a base level of 14 for his § 1594(c) conviction because this would disregard how Title 18 treats § 1594(c) convictions differently than offenses typically receiving a base offense level of 14. In establishing the Sentencing Commission, 28 U.S.C. § 994 states: “The Commission . . . shall, for each category of offense involving each category of defendant, establish a sentencing range that is consistent with all pertinent provisions of title 18, United States Code.” 29 U.S.C. § 994(b)(1). Furthermore, the Second Circuit has recognized that when an agency is tasked with regulating pursuant to a statute, the court will not defer to an agency interpretation that is “arbitrary, capricious, or manifestly contrary to the statute.” *Adams v. Holder*, 692 F.3d 91, 95 (2d Cir. 2012) (quoting *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984)); *see also Auburn Hous. Auth. v. Martinez*, 277 F.3d 139, 144 (2d Cir. 2002).

Categorizing 18 U.S.C. § 1594(c) with statutes that are assigned a base offense level of 14 would be inconsistent with the structure of Title 18, as those statutes provide maximum terms of imprisonment and involve largely nonviolent conduct. In addition to 18 U.S.C. § 1591, 8 U.S.C. § 1328 and 18 U.S.C. §§ 2421, 2422(a) are offenses with base levels evaluated through § 2G1.1 (assuming the offenses involve a victim other than a minor). U.S.S.G. § 2G1.1 cmt. stat. provisions. In contrast to 18 U.S.C. § 1591(b)(1), these offenses are accorded a base offense level of 14. *See* U.S.S.G. § 2G1.1(a)(2); *see also United States v. Hurant*, 16 Cr. 45 (MKB),

2017 WL 3327581 at \*1 (E.D.N.Y. Aug. 17, 2017). 8 U.S.C. § 1328 and 18 U.S.C. §§ 2421, 2422(a) expressly limit the maximum imprisonment for these offenses to ten years, ten years, and ten years, respectively. On the other hand, 18 U.S.C. § 1594(c) has a maximum term of imprisonment of “any terms of life,” indicating that it prohibits conduct that is more severe and punishable. Additionally, 8 U.S.C. § 1328 and 18 U.S.C. § 2421 do not concern violent conduct, and § 2422(a) rarely concerns violent conduct. Yet, the Defendant’s § 1594(c) conviction, like the convictions in *Sims and Carter*, see *Sims*, 957 F.3d at 364; *Carter*, 960 F.3d at 1010, involves violent conduct observable in his use of force and coercion. This provides further reason for distinguishing § 1594(c) from statutes that are assigned the lower base offense level. Thus, a reading of the Guidelines assigning § 1594(c) an equivalent base level to that of these other offenses would be “manifestly contrary” to 28 U.S.C. § 994. See *Chevron*, 467 U.S. at 844. In order to ensure that the Sentencing Guidelines remain consistent with the penalties set forth in Title 18, the § 2G1.1(a)(1) enhancement should apply to 18 U.S.C. § 1594(c) convictions such as the Defendant’s.

In full, because the *Wei Lin* holding creates absurd, structurally inconsistent results in relation to the Sentencing Guidelines and Title 18, the Court should reject it and apply the enhanced base offense level of 34 for the Defendant’s § 1594(c) conviction.

**C. Case law in the Southern District of New York Applies the Enhanced Base Offense Level**

Finally, A base offense level of 34 should be applied to the Defendant’s § 1594(c) conviction because such a decision would be consistent with prior rulings in this District. Recently, in *United States v. Vanier*, the court expressly recognized that *Wei Lin* was not applicable to the Sentencing Guidelines calculation for § 1594(c), thereby agreeing with the

reasoning set forth by the Third and Eighth Circuits in *Sims* and *Carter*. *United States v. Vanier*, 18 Cr. 873 (VSB), 2021 WL 5989773 at \*12 n.11 (S.D.N.Y. Dec. 17, 2021). Additionally, this court has a thorough history of applying the enhanced base offense level for defendants convicted of sex trafficking conspiracies.

In *Vanier*, the defendant pled guilty to a superseding information charging him with conspiracy to commit sex trafficking 18 U.S.C. § 1594(c). As in *United States v. Valdez*, the victim in *Vanier* was a minor, *Id.* at \*3, so the base offense level was governed by § 2G1.3. The Superseding Information did not mention the penalty provisions in § (b)(1) or § (b)(2), but it did refer to the defendant’s use of “force, threats of force, [and] coercion” during his engagement in the sex trafficking. *Id.* Accordingly, because the allegations in the Superseding Information “matched” the relevant language in § 1591(b)(1) “related to force, fraud, or coercion,” and Varnier’s allocution satisfied the requisite elements of § 1591(a), Judge Broderick held that the heightened base offense level of 34 applied. Sentencing Tr. at 11:12-16, *United States v. Vanier*, 18 Cr. 873 (VSB), 2021 WL 5989773 at \*12 (S.D.N.Y. Dec. 17, 2021). The choice to apply the base offense level enhancement, without a count listed under § 1591(b)(1), bolsters the view proposed by *Sims* and *Li* that the term “offense of conviction” tracks with the conduct of the offense rather than the literal offense of conviction. More importantly, in *Vanier*, Judge Broderick articulated that he agreed with the Third and Eighth Circuit decisions, *Sims* and *Carter*, rejecting *Wei Lin*. *Vanier*, 2021 WL 5989773, at \*12 n.11 (criticizing how the Ninth Circuit’s decision would drastically lower sentences for defendants convicted under § 1594(c) compared to those convicted of the substantive offense).

Other cases have also demonstrated this District’s acceptance of the view that § 1594(c) convictions should receive the same base offense level as their substantive offenses. In *United*



*States v. Pierre-Louis*, 16 Cr. 541 (CM), 2019 WL 2235886 (S.D.N.Y. May 15, 2019), Judge McMahon held that the defendant’s conviction under § 1594(c) of conspiring to violate §§ 1591(a)(1) and (b)(1), required a base offense level of 34. Judge McMahon reasoned that “the base offense level for the conspiracy is the same as the base offense level for the substantive offense,” and, in that case the base offense level for the substantive offense was 34. *Id.*

Analogously, In *United States v. Almonte*, 16 Cr. 670 (KMW), 2020 WL 6482874 (S.D.N.Y. Nov. 4, 2020), the count of conviction was § 1594(c), but this time as a conspiracy to violate § 1591(b)(2). Judge Wood rejected the defense council’s argument, founded on *Wei Lin*, that a base offense level of 14 should be applied and instead held for a base offense level of 30, which corresponds to convictions under § 1591(b)(2). *Id.* See also *United States v. Goddard*, 17 Cr. 439 (LAP), 2018 WL 4440503 (S.D.N.Y. Sep. 17, 2018) (concluding that, for a conspiracy under 1594(c) to violate § 1591(b)(2), a base offense level of 30 applied).

Like the defendants in each of these cases, the Defendant here was convicted under § 1594(c) and has similarly objected, citing *Wei Lin*. The court should follow its prior rulings and impose the base offense level of 34.

#### **IV. CONCLUSION**

The base offense level for the Defendant’s 18 U.S.C. § 1594(c) conviction was correctly calculated by the PSR to be 34. The Defendant’s objection, citing *Wei Lin*, is misguided because it misconstrues the text of U.S.S.G. §§ 2G1.1 and 2X1.1, violates the structure of the Guidelines and Title 18, and is inconsistent with the prior reasoning in this District.

**Applicant Details**

First Name **Ingrid**  
 Last Name **Sydenstricker**  
 Citizenship Status **U. S. Citizen**  
 Email Address [sydenstricker.i@northeastern.edu](mailto:sydenstricker.i@northeastern.edu)  
 Address

Address
<b>Street</b> <b>590 Centre St</b> <b>City</b> <b>Jamaica Plain</b> <b>State/Territory</b> <b>Massachusetts</b> <b>Zip</b> <b>02130-2558</b> <b>Country</b> <b>United States</b>

Contact Phone Number **6072277838**

**Applicant Education**

BA/BS From **University of Chicago**  
 Date of BA/BS **June 2016**  
 JD/LLB From **Northeastern University School of Law**  
[http://www.nalplawsonline.org/ndlsdir\\_search\\_results.asp?lscd=12205&yr=2013](http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=12205&yr=2013)  
 Date of JD/LLB **May 17, 2024**  
 Class Rank **School does not rank**  
 Does the law school have a Law Review/Journal? **Yes**  
 Law Review/Journal? **No**  
 Moot Court Experience **No**

**Bar Admission**

**Prior Judicial Experience**

Judicial Internships/ Externships	Yes
Post-graduate Judicial Law Clerk	No

**Specialized Work Experience**

**Professional Organization**

Organizations	Just the Beginning Organization
---------------	---------------------------------

**Recommenders**

Mallory, Carol  
c.mallory@northeastern.edu  
6173735841  
Adler, Libby  
l.adler@northeastern.edu  
617-373-7513  
Sorokin, Leo  
honorable\_leo\_sorokin@mad.uscourts.gov  
617-748-9223

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

Ingrid Vianna Sydenstricker  
590 Centre St. Apt 7  
Jamaica Plain, MA 02130

June 12, 2023

The Honorable Jamar K. Walker  
Walter E. Hoffman U.S. Courthouse  
600 Granby Street  
Norfolk, VA 23510

Dear Judge Walker:

It is with great enthusiasm that I apply for a clerkship in your chambers for the 2024-2025 term. As a rising 3L at Northeastern University School of Law with a public interest background and litigation experience—including an internship with the Hon. Leo T. Sorokin at the District of Massachusetts—I believe I can make a meaningful contribution to your chambers and would greatly appreciate the opportunity to work with your team.

As a full-time judicial intern to Judge Sorokin last fall, I conducted legal research and wrote memoranda and opinions on a variety of legal issues ranging from a Social Security disability appeal to a motion for sanctions in an admiralty case. Following my internship, Judge Sorokin invited me to stay on for another semester both to help resolve complex motions involving rent control policies at a manufactured housing development and to serve as the teaching assistant for his course, Restorative Justice in Federal Court, at Boston College Law School. My time at the District of Massachusetts provided an unparalleled opportunity to hone my legal reasoning and writing skills, thus motivating me to pursue a year-long clerkship upon graduation where I can continue to do such engaging work.

Following my judicial internship, I have continued to work in litigation—supporting challenges involving Title VI, the Eighth Amendment, and various environmental statutes—through my work at Alternatives for Community & Environment and 80 Acres Law Center, two community-centered organizations tackling environmental injustice. In law school, I have built on these professional experiences by pursuing research opportunities such as work on the forthcoming book, *Legal Design: Dignifying People in Legal Systems* (Cambridge University Press), and my own independent research on the use of sanctuary jurisdictions to advance reproductive autonomy (manuscript in progress). Such experiences are a continuation of the work I did before law school, when I was an impact litigation paralegal at the ACLU responsible for managing dozens of cases including multiple class actions.

Beyond my professional experience, I believe that my background as a queer, first-generation Brazilian-American allows me to bring a unique and valuable perspective to the critical work of the judiciary. It would be an honor to join your chambers. Attached please find my resume, law school transcript and evaluations, writing sample, and letters of recommendation from Judge Sorokin, Professor Libby Adler, and Professor Carol Mallory.

Thank you for your time and consideration. Please do not hesitate to contact me at 607-227-7838 or sydenstricker.i@northeastern.edu for any further information. I look forward to hearing from you.

Respectfully,

Ingrid Vianna Sydenstricker

## Ingrid Vianna Sydenstricker

sydenstricker.i@northeastern.edu · 607-227-7838 · 590 Centre St Apt 7 Jamaica Plain, MA 02130 · she/her

### EDUCATION

**NORTHEASTERN UNIVERSITY SCHOOL OF LAW** Juris Doctor, Expected May 2024

Honors: Public Interest Law Scholar (full-tuition merit scholarship)

Activities: Latinx Law Student Association, Committee Against Institutional Racism, Student Conduct/Title IX Board

Research Assistant: NuLawLab (conducted research for a book on dignity in legal design)

Teaching Assistant: Hon. Leo T. Sorokin (Boston College Law), Legal Research & Writing (Fall 2023)

**THE UNIVERSITY OF CHICAGO** B.A. in Political Science with honors, June 2016

Honors: Humanitarian Award, University Scholar, Pozen Human Rights Summer Fellowship

### LEGAL & POLICY EXPERIENCE

**Alternatives for Community & Environment** (full-time) Boston, MA

May 2023 – Present

*Legal Intern*

Support litigation including a Title VI action to remediate landfill contamination in an environmental justice community (research the Resource Conservation and Recovery Act, conduct a fact-finding inquiry) and a land court zoning appeal challenging construction on a polluted site. Draft comments on regulations to reduce building greenhouse gas emissions.

**80 Acres Law Center** (part-time)

Jan. – April 2023

*Legal Intern*

Supported environmental justice litigation and policy efforts by researching associational standing, protections against lead exposure, and the use of the Eighth Amendment to challenge the impact of climate change on incarcerated individuals.

**U.S. District Court, District of Massachusetts** (full-time) Boston, MA

Sept. 2022 – Jan. 2023

*Judicial Intern to Hon. Leo T. Sorokin*

Conducted legal research, drafted memoranda, and wrote two full judicial opinions on issues such as: a Social Security disability appeal, a motion for sanctions in an admiralty case, a motion for judgment on the pleadings in a housing case, judicial recusal, executive removal powers, and implicit bias in juries. Supported court restorative justice programs.

**Water Resources Institute, Cornell University** Ithaca, NY

Jan. 2020 – July 2021

*Policy & Environmental Justice Analyst*

Advised the NYS Department of Environmental Conservation on environmental justice issues and regulations, including how to make climate adaptation more equitable. Lobbied representatives for increased research funding and policies that advance water justice such as lead and PFAS protections. Supervised interns and ran programming on environmental justice.

**New York Civil Liberties Union (ACLU of New York)** New York, NY

Mar. 2018 – Jan. 2020

*Paralegal*

Helped prepare filings for 30+ impact litigation cases in state and federal court. Managed client communication, organized case documents, and coordinated litigation with co-counsel, experts, and court clerks. Supported fact gathering, deposition preparation, and settlement negotiations. Answered daily immigration intakes. Conducted KYR and civic education trainings at schools and local jails. Developed language access protocols to ensure effective communication with all clients. Provided translation and interpretation. Served on the ACLU Latinx Employee Resource Group, NYCLU DEI Committee.

### ACTIVITIES

**Suicide Prevention & Crisis Services (Suicide Hotline)**

Jan. 2021 – Present

Provide crisis counseling to individuals experiencing mental health and other life crises as a counselor on the suicide hotline.

**LANGUAGES** Brazilian Portuguese (heritage speaker) · French (fluent) · Spanish (advanced) · Arabic (elementary)

**INTERESTS** Salsa dancing, community gardening, digital illustration, contemporary fiction

## NORTHEASTERN UNIVERSITY



# Northeastern University Registrar

## Office of the University Registrar

230-271  
360 Huntington Avenue  
Boston, MA 02115-5000  
email: transcripts@northeastern.edu

web: <http://www.northeastern.edu/registrar/>

Record of: Ingrid E Sydenstricker NUID: 002120561  
Issued To: INGRID SYDENSTRICKER  
SYDENSTRICKER.I@NORTHEASTERN.E  
REFNUM:07265466

Primary Program  
Juris Doctor

College : School of Law  
Major : Law

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
----------	--------------	----------	-------

## INSTITUTION CREDIT:

Fall 2021 Law Semester ( 08/30/2021 - 12/22/2021 )

LAW 6100	Civil Procedure	5.00 HH	0.000
LAW 6105	Property	4.00 H	0.000

LAW 6106	Torts	4.00 H	0.000
LAW 6160	Legal Skills in Social Context	2.00 HH	0.000
LAW 6165	LSSC: Research & Writing	2.00 HH	0.000

Ehrs:17.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000

Spring 2022 Law Semester ( 01/10/2022 - 05/06/2022 )

LAW 6101	Constitutional Law	4.00 H	0.000
LAW 6102	Contracts	5.00 P	0.000
LAW 6103	Criminal Justice	4.00 H	0.000
LAW 6160	Legal Skills in Social Context	2.00 HH	0.000
LAW 6165	LSSC: Research & Writing	2.00 HH	0.000

Ehrs:17.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000

Summer 2022 Law Semester ( 05/09/2022 - 08/23/2022 )

LAW 7300	Administrative Law	3.00 HH	0.000
LAW 7329	Environmental Law	3.00 H	0.000
LAW 7443	Professional Responsibility	3.00 HH	0.000
LAW 7488	Sexuality, Gender & the Law	3.00 HH	0.000
LAW 7690	Intro Writing for Litigation	1.00 HH	0.000

LAW 7978	Independent Study	3.00 HH	0.000
----------	-------------------	---------	-------

Ehrs:16.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000

Fall 2022 Law Semester ( 08/29/2022 - 12/23/2022 )

COOP: U.S. Dist. Court, Dist. of Mass.,  
Judge Sorokin  
Boston, MA

\*\*\*\*\* CONTINUED ON NEXT COLUMN \*\*\*\*\*

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
----------	--------------	----------	-------

Institution Information continued:

LAW 7940	Reflections on Lawyering	1.00 HH	0.000
LAW 7941	Pub Int Pub Serv Field Placemt	7.00 CR	0.000
LAW 7964	Co-op Work Experience	0.00 CR	0.000
LAW 7983	Human Rights, Earth Justice	2.00 HH	0.000

Ehrs:10.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000

Spring 2023 Law Semester ( 01/09/2023 - 04/29/2023 )

LAW 7332	Evidence	4.00 HH	0.000
LAW 7394	Land Use	3.00 HH	0.000
LAW 7682	Hist Injustice and Reparation	3.00 HH	0.000
LAW 7932	Public Service Externship Sem	1.00 HH	0.000

Ehrs:11.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000

IN PROGRESS WORK

LAW 7939	Public Service Externship	3.00	IN PROGRESS
LAW 7978	Independent Study	2.00	IN PROGRESS

In Progress Credits 5.00

Summer 2023 Law Semester ( 05/08/2023 - 08/26/2023 )

COOP: Alternatives for Community and Environment,  
Inc.

Roxbury, MA

IN PROGRESS WORK

LAW 7634	Energy Law and Policy	3.00	IN PROGRESS
LAW 7966	Public Interest Co-op Work Exp	0.00	IN PROGRESS

In Progress Credits 3.00

\*\*\*\*\* TRANSCRIPT TOTALS \*\*\*\*\*

	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	71.000	0.000	0.000	0.000

TOTAL TRANSFER	0.000	0.000	0.000	0.000
----------------	-------	-------	-------	-------

OVERALL	71.000	0.000	0.000	0.000
---------	--------	-------	-------	-------

\*\*\*\*\* END OF TRANSCRIPT \*\*\*\*\*

Page: 1

Rebecca Hunter Assoc VP & University Registrar

Northeastern University, Office of the Registrar  
271 Huntington Ave.  
Boston, MA 02115

# SCALE OF GRADES AND COMMENTS TO ACCOMPANY TRANSCRIPTS

**Effective Fall 2016:** College of Professional Studies undergraduate programs converted from a quarter system to a semester system. For student records including hours earned prior to fall 2016, the credit hour conversion rate is as follows: QH x .75. For example a 4-credit quarter course is now equivalent to a 3-credit semester course.

**Effective Fall 2009:** Northeastern University converted its Student Information System. All courses and Programs were converted.

## Northeastern University Course Numbering

### UNDERGRADUATE

**Orientation and Basic** 0001-0999  
No degree credit

**Introductory Level (First year)** 1000-1999

Survey, Foundation and Introductory courses normally with no prerequisites and designed primarily for students with no prior background

**Intermediate Level (Sophomore/Junior year)** 2000-2999

Normally designed for sophomores and above, but in some cases open to freshman majors in the department.

**Upper Intermediate Level (Junior year)** 3000-3999

Designed primarily as courses for juniors. Pre-requisites are normally required and these courses are pre-requisites for advanced courses.

**Advanced Level (Senior year)** 4000-4999

Designed primarily for juniors and seniors, or specialized courses. Includes research, capstone and thesis.

### GRADUATE

**Orientation and Basic** 0001-0999  
No degree credit

**1st level graduate** 5000-5999

Courses primarily for graduate students and qualified undergraduate students with permission

**2nd level graduate** 6000-6999

Generally for Master's only and Clinical Doctorate

**3rd level graduate** 7000-7999

Master's and Doctoral level classes. Includes Master's Thesis

**Clinical/Research/Readings** 8000-8999

Includes Comprehensive Exam Preparation

**Doctoral Research and Dissertation** 9000-9999

## Northeastern University Grade Scale

Letter Grade	Numerical Equivalent	Explanation
A	4.0	Outstanding Achievement
A-	3.667	
B+	3.333	
B	3.0	Good Achievement
B-	2.667	
C+	2.333	
C	2.0	Satisfactory Achievement
C-	1.667	
D+	1.333	
D	1.0	Poor Achievement
D-	0.667	
F	0.0	Failure
I		Incomplete
IP		In Progress
NE		Not Enrolled
NG		Grade not reported by Faculty
S		Satisfactory (Pass/Fail basis; counts toward total degree requirements)
U		Unsatisfactory (Pass/Fail basis)
X		Incomplete (Pass/Fail basis)
L		Audit (no credit given)
T		Transfer
W		Course Withdrawal

## Course Comments

E	Course excluded from GPA
HON	Honors level course
I	Course included in GPA

## LAW SCHOOL

CR	Credit
F	Fail
H	Honors
HH	High Honors
I	Incomplete
MP	Marginal Pass
P	Pass

## Earned Hours

Northeastern University offers both quarter hour and semester hour programs.

**Quarter Hours to Semester Hours Conversion Rate:** For student records including quarter hours, the approved semester hour conversion rate is as follows: QH x .75. For example a 4-credit quarter course is equivalent to 3 credit semester courses.



### **Northeastern University School of Law Grading and Evaluation System**

A global leader in experiential learning for over 50 years, Northeastern University School of Law (“NUSL”) integrates academics with practical skills as its core educational philosophy. To fulfill NUSL graduation requirements, law students must earn at least 83 academic credits and complete at least three terms of full-time, law-related work through “co-op,” our unique Cooperative Legal Education Program.

Consonant with the word “cooperative,” NUSL cultivates an atmosphere of cooperation and mutual respect, exemplified in our course evaluation system. NUSL faculty provide detailed feedback to students through narrative evaluations, designed to prepare law students for the practice of law. The narrative evaluations examine law student written work product, contributions to class discussions, results of examinations, specific strengths and weaknesses, and overall engagement in the course. Faculty also award the student a grade in each course, using the following categories:

- **High Honors**
- **Honors**
- **Pass**
- **Marginal Pass**
- **Fail**

A small number of courses are evaluated using a Credit/No Credit evaluation system, instead of a grade. NUSL does not provide GPAs or class ranks.

NUSL transcripts include the following information:

- The course name, grade received, and number credits earned;
- The faculty’s narrative evaluation for the course; and
- All co-ops completed, and the evaluations provided by the co-op employer.

“In progress” notations on a transcript indicate that a student has not yet received an evaluation from faculty for a particular course.



# Co-op Evaluation

Ingrid Vianna Sydenstricker

## Fall 2022 : Ingrid E Sydenstricker - Fall 2022 Early (94720) (U.S. Dist. Court, Dist. of Mass., Judge Sorokin (Boston, MA))

### EMPLOYER FINAL EVALUATION

Approve Yes

Requested On Dec 19, 2022 9:43 am

Student Ingrid E Sydenstricker

Date Employed From: September 6, 2022

Date Employed To: December 16, 2022

Address 1 Courthouse Way, Suite 6-130, Boston, MA 02210

Employer Name U.S. Dist. Court, Dist. of Mass., Judge Sorokin (Boston, MA)

**1) Areas of law engaged in, and level of proficiency** Ingrid worked on legal issues spanning a broad range of subjects: a Social Security disability appeal; a motion for sanctions in an admiralty case; a motion for judgment on the pleadings in a civil case involving a manufactured housing development; implicit bias in jury selection; disclosures of funding for amicus briefs; judicial recusal based on a spouse's stock ownership; and restorative justice. In every instance, Ingrid efficiently produced thoughtful, helpful work product showing her understanding of the relevant facts and legal principles. She was one of the most prolific interns we have ever had in our chambers.

**2) Skills demonstrated during the co-op** Ingrid's writing is clear and organized, whether conveyed via email summarizing research on a discrete question or in a more formal memo/draft opinion. She effectively conveys pertinent facts from the record, and her legal analysis is very strong. Unlike most interns of her experience level, she understands that it is not enough to cite a legal rule and then identify which party's position should prevail - she explains why that conclusion follows from the rule by persuasively applying the law she has researched to the facts confronting the court. Most interns, and many term law clerks, give short shrift to that step in their written analysis. The strength of Ingrid's research and writing was apparent early in her co-op, and it quickly led the judge to rely more and more on her to work on discrete legal questions that arose often in time-sensitive contexts.

**3) Professionalism, work ethic, and** Ingrid settled into our chambers team quickly and comfortably. She contributed to the work of chambers both in her written assignments in by participating in group

**responsiveness to feedback**

discussions of proceedings or issues. She welcomed assignments regardless of the topic, worked efficiently and independently, asked good questions, and was proactive about keeping all of us apprised of the status of her work. Ingrid welcomed feedback and successfully incorporated it not only when it was given but also in her writing moving forward. She is curious and thoughtful and sincerely interested in improving her writing and analysis to grow into a more effective soon-to-be lawyer.

**4) Ability to work with colleagues and clients; ability to integrate knowledge from other disciplines**

Ingrid was a delight to have in chambers. She engaged with the judge, me, the term law clerks, and other interns with respect and kindness, both professionally and personally. And she often contributed to conversations with her own life experience or knowledge from work and activities outside of chambers.

**5) Further details about the student's performance**

Ingrid is a star who ultimately performed more like an extra term law clerk than a student intern. She's one of the top 3 interns I have supervised in my ten years working for Judge Sorokin (plus 3 years working for other federal judges earlier in my career). The judge also places her among the top 3 interns he has encountered during his 17+ years on the bench. She so impressed him that he asked her to continue on a part-time basis to assist him with a restorative justice class he teaches in the spring at Boston College. Any employer, including any judge receiving an application from her for a post-graduate term clerkship, would be lucky to hire her.

**Submitted by:**

Amy Robinson

**Date submitted:**

December 19, 2022

Help Desk: 703-373-7040 (Hours: Mon-Fri, 9am-8pm EST)  
[Privacy Policy](#) | [Terms of Use](#)

# Course Evaluations

Ingrid Vianna Sydenstricker

**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

---

**Student:** Ingrid Sydenstricker  
**Exam #:**  
**Course Title:** Hist Injustice and Reparation  
**Course ID:** LAW 7682  
**Credits:** 3  
**Term:** Spring 2023 Law Semester  
**Instructor :** Burnham, Margaret A.  
**Grade:** High Honors

---

**Course Description:**

Examines historical injustice and reparation with a focus on the Afro-diasporic experience. Explores the genealogy of reparation as a tool of law and politics and associated debates in law, political theory, ethics, and history. Considers themes such as the effect of the passage of time on claims; determination of who owes and who is owed; the responsibility of state and nonstate actors, collectives, and “implicated subjects”; the mechanics of reparations; and the role of state apologies, truth projects, and memory sites. Looks at the global movement to address slavery's legacy. Explores gendered practices, land redistribution claims, and design and implementation challenges. Uses case studies to deepen discussion and examine current movements for redress and reparation.

---

**Performance Highlights:**

You performed at the highest level in this course. One of the strongest students in the group, you lifted everyone's game. Your comments in class were astute, informed, and well articulated. Your oral presentation was strong and fascinating. Your paper is elegantly written, skillfully weaving climate justice, redlining, heat islands, and reparations concepts. The paper offers an important addition to the literature on reparations and historical disinvestment. It was a pleasure to have you in the course.

---

**Date:** 6.20.2023 5:10PM

**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

---

**Student:** Ingrid Sydenstricker  
**Exam #:** 25239  
**Course Title:** Land Use  
**Course ID:** LAW 7394  
**Credits:** 3  
**Term:** Spring 2023 Law Semester  
**Instructor :** Foster, Robert B.  
**Grade:** High Honors

---

**Course Description:**

A survey of legal doctrines, techniques and institutions relating to regulation of the use of real property. Topics covered include constitutional questions of takings by public agencies, the scope of the police power as it affects land use and the basic techniques of zoning and subdivision control. Students study, among other issues, recent cases on exclusion of low income housing, current techniques to encourage housing development (inclusionary or "linkage" regulations) and First Amendment questions arising from land use controls.

---

**Performance Highlights:**

You acquired a solid grounding in American land use law, including traditional Euclidean zoning and current trends in land use.

You made many valuable contributions in class discussions.

You demonstrated a strong and nuanced understanding of zoning law, and an astute analysis of the application of zoning law to emerging issues.

You prepared an excellent paper on the application of the public trust doctrine to protect biodiversity.

---

**Date:** 5.29.2023 3:43PM

**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

---

**Student:** Ingrid Sydenstricker  
**Exam #:** 25239  
**Course Title:** Evidence  
**Course ID:** LAW 7332  
**Credits:** 4  
**Term:** Spring 2023 Law Semester  
**Instructor :** Tumposky, Michael L.  
**Grade:** High Honors

---

**Course Description:**

This course examines how courtroom lawyers use the evidence rules to present their cases—notably, rules regarding relevance, hearsay, impeachment, character, and experts. The approach to the study of evidence will be primarily through the “problem” method—that is, applying the provisions of the Federal Rules of Evidence to concrete courtroom situations. Theoretical issues will be explored as a way to deepen the student’s appreciation of how the evidence rules can and ought to be used in litigation.

---

**Performance Highlights:**

Your performance in the class was excellent. You have nearly mastered the Rules of Evidence. Great job!

---

**Date:** 6.2.2023 1:54PM

**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

---

**Student:** Ingrid Sydenstricker  
**Exam #:** 24833  
**Course Title:** Human Rights, Earth Justice  
**Course ID:** LAW 7983  
**Credits:** 2  
**Term:** Fall 2022 Law Semester  
**Instructor :** Segovia, Natali  
**Grade:** High Honors

---

**Course Description:**

In Defense of the Sacred: Human Rights, Earth Justice, and the Law Around the world, human rights defenders face great risks to protect sacred sites, ancestral lands, the Water, and the Earth from desecration by corporations and extractive industry. This course explores the role of law in the defense of defenders, fundamental human rights, and the Earth. We will review normative foundations including the role of treaties within the U.S. legal framework, and the complex tapestry of federal and international norms intended to protect Indigenous Peoples, Original Nations, and the Earth. Our case studies will highlight challenges and limitations of those protections. Ultimately, the course is an invitation to re-imagine the law as a vehicle for social change and lawyering as “relational” in tandem with communities working to protect the Sacred against environmental destruction.

---

**Performance Highlights:**

Highlights:

- Your reflections were analytically strong and beautifully written.
  - Your insight added much to class participation.
- 

**Date:** 5.8.2023 1:06PM



**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

---

**Student:** Sydenstricker, Ingrid  
**Exam #:** 14044  
**Course Title:** Administrative Law  
**Course ID:** LAW 7300  
**Credits:** 3  
**Term:** Summer 2022 Law Semester  
**Instructor :** Rosenbloom, Rachel  
**Grade:** High Honors

---

**Course Description:**

This course provides an introduction to the legal doctrines designed to empower and constrain government agencies and officials in their daily practice of governance. Topics include the constitutional status of administrative agencies, due process, the Administrative Procedure Act and the availability and standards of judicial review of agency actions. The course emphasizes the historical evolution of the modern administrative state and the regulatory agency's peculiar role in our system of governance.

---

**Performance Highlights:**

- Demonstrated a strong grasp of the Administrative Procedure Act and relevant Supreme Court jurisprudence
  - Drafted an outstanding research memorandum analyzing the relationship between a regulation and its authorizing statute
  - Demonstrated excellent research and writing skills
  - Made frequent contributions to class discussions
- 

**Date:** 10.6.2022 3:58PM

**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

---

**Student:** Sydenstricker, Ingrid  
**Exam #:** 14044  
**Course Title:** Intro Writing for Litigation  
**Course ID:** LAW 7690  
**Credits:** 1  
**Term:** Summer 2022 Law Semester  
**Instructor :** Leahy, Stefanie  
**Grade:** High Honors

---

**Course Description:**

Introduces students to litigation documents, including engagement and demand letters; complaints; answers; discovery requests (such as interrogatories, requests for the production of documents, and requests for admission); and motions. Considers audience, purpose, and components in drafting a document, taking into account relevant strategic considerations and general principles that apply to all litigation documents. Examines the protections associated with attorney-client privilege and attorney work product. Offers students an opportunity to review and draft a variety of litigation documents, to find and modify sample documents, and to find and apply the rules of the relevant jurisdiction.

---

**Performance Highlights:**

Over the course of two weeks, students in Introduction to Writing for Lit had the opportunity to work collaboratively with other students as well as discuss and draft a variety of litigation documents.

Ingrid was a frequent and vocal participant in class discussions, sharing perspective and knowledge from prior work experiences. She has well developed research and writing skills. She works incredibly well either independently or in small groups and consistently produces high quality work. Ingrid successfully produced a case brief related to the operation of the work product doctrine in MA courts, edited a Complaint, submitted "research request" supervisor emails, analyzed documents for privilege, and produced a tightly written Motion in Limine.

Considering the amount of work required in such a short period of time, Ingrid displayed excellent time management skills. She also demonstrated understanding of intricacies of the attorney client privilege and work product doctrine within the litigation space, which was a theme discussed throughout the two-week course. In the final reflection, Ingrid highlighted the takeaways from the course, including the importance of pre-writing preparation and centering the client in strategy decisions. Ingrid also understands the importance of recognizing how the big picture litigation strategy plays out more concretely through numerous smaller (but no less important) everyday decisions like how much specificity to put into a complaint or what questions to include in interrogatories.

Ingrid is a highly competent student, and has every attribute to be an excellent litigator.

---

**Date:** 9.13.2022 7:04PM

**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

---

**Student:** Sydenstricker, Ingrid  
**Exam #:** 14044  
**Course Title:** Sexuality, Gender & the Law  
**Course ID:** LAW 7488  
**Credits:** 3  
**Term:** Summer 2022 Law Semester  
**Instructor :** Adler, Libby  
**Grade:** High Honors

---

**Course Description:**

This course uses case law and theory to address doctrinal problems and justice concerns associated with gender and sexuality. The syllabus is organized around notions such as privacy, identity and consent, all of which are conceptual pillars upon which arguments in the domain of sexuality and gender typically rely. Doctrinal topics include same-sex marriage, sodomy, sexual harassment, discrimination, among others, but the course is not a doctrinal survey; it is a critical inquiry into key concepts that cut across doctrinal areas. Students should expect to write a paper and share some of what they have learned with the class.

---

**Performance Highlights:**

You wrote an outstanding paper about the use of sanctuary cities to protect access to abortion. Your analysis demonstrated not only an impressive understanding of a broad array of doctrinal issues that may affect the constitutionality of this practice, but also the deft use of sophisticated theoretical tools drawn from American Legal Realism. The paper was well-researched and fluidly written.

---

**Date:** 9.20.2022 10:46AM

**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

---

**Student:** Sydenstricker, Ingrid  
**Exam #:** 14044  
**Course Title:** Independent Study  
**Course ID:** LAW 7978  
**Credits:** 3  
**Term:** Summer 2022 Law Semester  
**Instructor :** Jackson, Daniel  
**Grade:** High Honors

---

**Course Description:**

Any upper level student in good standing may engage in one or more independent study projects, totaling not more than three credits during an academic quarter and six credits during the two upper level years. A student wishing to conduct an independent study must secure the approval of a faculty member who agrees to supervise the project. Many students use independent studies to continue to examine a topic begun during co-op, or to extend the syllabus of a course. Students may also design projects which are not based in either course work or co-op, but in all cases a faculty sponsor must agree to the project. May be repeated for up to 6 total credits.

---

**Performance Highlights:**

This independent study saw Ingrid join a team of two other law students who were staffed as research/editorial/content assistants for the NuLawLab directors' book Legal Design: Dignifying People in Legal Systems, to be published by Cambridge University Press in Summer 2023. The edited volume rests on the premise that legal systems, as currently configured, often fail to enhance the dignity of people moving through them, despite the importance of dignity to achieving human wellbeing and systemic equity in today's societies. It proposes that the emerging and rapidly growing field of legal design, when applied to reimagining legal systems, can produce the opposite result—systems that enhance human dignity and therefore justice and fairness. Ingrid and her two colleagues worked in close collaboration with the book team of three co-editors (NuLawLab's executive, creative, and design directors) throughout the summer to support the development and drafting of a number of the book's chapters. Each week saw a one hour weekly team meeting for which Ingrid prepared a research progress report and participated in a lively discussion of the import of her research findings. New research assignments were distributed roughly every two weeks.

- Ingrid did an outstanding job on this work. She is an excellent, tenacious researcher with a particular talent for easily working across multiple disciplines and theoretical frameworks (sometimes in the same research question).
  - Her work focused on literature reviews regarding:
    - the impact of cultural organizing on housing justice;
    - how social justice advocates define and work with cultural organizing methods;
    - dignity jurisprudence (both contemporary and historical);
    - how law, design and legal design projects can center dignity; and
    - the intersection of dignity and inclusive design.
  - Ingrid was an outstanding team member, who approached her work with an equal combination of diligence and precision.
  - Ingrid's natural talents of precision and thoroughness will serve her well in her legal career.
- 

**Date:** 9.28.2022 4:28PM

**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

---

**Student:** Sydenstricker, Ingrid  
**Exam #:** 14044  
**Course Title:** Professional Responsibility  
**Course ID:** LAW 7443  
**Credits:** 3  
**Term:** Summer 2022 Law Semester  
**Instructor :** Long, Alex  
**Grade:** High Honors

---

**Course Description:**

This course focuses on the legal, ethical and professional dilemmas encountered by lawyers. Emphasis is on justice as a product of the quality of life that society provides to people rather than merely the process that the legal system provides once a crime or breach of duty has occurred. The course also provides students with a working knowledge of the American Bar Association's Model Rules of Professional Conduct and the Code of Professional Responsibility as well as an understanding of the underlying issues and a perspective within which to evaluate them. In addition, the course examines the distribution of legal services to poor and non-poor clients.

---

**Performance Highlights:**

- Acquired a thorough overview of the rules of professional conduct, common law principles, and constitutional rules that regulate the conduct of lawyers.
  - Made meaningful contributions to class discussions.
  - Wrote an excellent research paper on the subject of the appointment of a special prosecutor to prosecute a case following the refusal of the U.S. Attorney's Office to do so.
- 

**Date:** 9.2.2022 10:23AM

**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

---

**Student:** Sydenstricker, Ingrid  
**Exam #:** 14044  
**Course Title:** Environmental Law  
**Course ID:** LAW 7329  
**Credits:** 3  
**Term:** Summer 2022 Law Semester  
**Instructor :** Meeks, Sarah  
**Grade:** Honors

---

**Course Description:**

This course focuses on federal and state environmental laws. Topics include pollution control, waste management, and cleanup of contaminated land and water. The course explores legislative policy and regulatory decisions as well as enforcement issues. We will give attention to questions of environmental justice and to the strategic use of legal tools in working to ensure safe and healthy surroundings for diverse groups of people.

**Performance Highlights:**

- Gained a solid understanding of several federal environmental statutes, including the Clean Water Act, Clean Air Act, Comprehensive Environmental Response, Compensation, and Liability Act (Superfund), Resource Conservation and Recovery Act, Endangered Species Act, and the National Environmental Policy Act.
- Demonstrated strong writing skills and legal analysis.
- Made valuable contributions to class discussion.
- Completed an outstanding written assignment on a complex legal issue presented in a Clean Air Act case pending before the U.S. Supreme Court.

---

**Date:** 9.22.2022 10:58PM

**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

---

<b>Student:</b>	Sydenstricker, Ingrid
<b>Exam #:</b>	13429
<b>Course Title:</b>	LSSC: Research & Writing
<b>Course ID:</b>	LAW 6165
<b>Credits:</b>	2
<b>Term:</b>	Spring 2022 Law Semester
<b>Instructor :</b>	Mallory, Carol
<b>Grade:</b>	High Honors

---

**Course Description:**

Competent and effective legal research and writing skills are the foundation for students' success in law school and in their legal careers. In LSSC's Legal Analysis, Research and Writing component, students learn about the organization of the American legal system, the sources and construction of laws, and how the application of laws may vary with the specific factual situation. Students learn how to research the law to find applicable legal rules, how to analyze and apply those rules to a factual situation, and how to communicate their legal analysis clearly and concisely to different audiences.

---

**Performance Highlights:**

Ingrid's performance in this class was excellent. Ingrid has strong analytical skills; her analysis was always well-supported by the law and she possesses the ability to think creatively about the application of law to fact that will make her an effective advocate. Ingrid research skills are impressive as well. She approaches research thoughtfully and creatively; her research was always thorough, and she is able to clearly distill the relevant authority in furtherance of his analysis. Ingrid's writing skills are similarly strong; her written work is always clear, concise, and well-organized. Her final brief—a memorandum of law in opposition to a motion for summary judgment—was a compelling and well-crafted piece of advocacy that a practicing attorney would be proud of. Finally, Ingrid demonstrated the ability to become an effective oral advocate; in her final oral argument she delivered a persuasive argument on behalf of her client and did so with poise and confidence. In short, Ingrid possesses the intellect and skill to become an exceptional attorney.

---

**Date:** 5.31.2022 4:14PM

**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

---

**Student:** Sydenstricker, Ingrid  
**Exam #:** 13429  
**Course Title:** Criminal Justice  
**Course ID:** LAW 6103  
**Credits:** 4  
**Term:** Spring 2022 Law Semester  
**Instructor :** Ramirez, Deborah  
**Grade:** Honors

---

**Course Description:**

In this course, students are introduced to the fundamental principles that guide the development, interpretation and analysis of the law of crimes. They are also exposed to the statutory texts—primarily the Model Penal Code, but also state statutes. In addition, students are introduced to the rules and principles used to apportion blame and responsibility in the criminal justice system. Finally, students examine the limits and potential of law as an instrument of social control.

---

**Performance Highlights:**

Overall, your performance in this class was excellent. On the exam, you did an excellent job of analyzing the Model Penal Code issues presented by the factual scenario in question one. On question two, you did an excellent job of analyzing the federal search and seizure issues that might be raised by the attorneys for Cougar and Samuel. In particular, you did an excellent job of analyzing Lucy's liability for murder

---

**Date:** 5.31.2022 2:32PM



**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

---

**Student:** Sydenstricker, Ingrid  
**Exam #:** 13429  
**Course Title:** Constitutional Law  
**Course ID:** LAW 6101  
**Credits:** 4  
**Term:** Spring 2022 Law Semester  
**Instructor :** Paul, Jeremy  
**Grade:** Honors

---

**Course Description:**

Studies the techniques of constitutional interpretation and some of the principal themes of constitutional law: federalism, separation of powers, public vs. private spheres, equality theory and rights analysis. The first part of the course is about the powers of government. The second part is an in-depth analysis of the 14th Amendment.

---

**Performance Highlights:**

You demonstrated strong ability to identify key legal issues.

Your knowledge across all sections of the course was impressive.

Your essays are clearly written and well-organized.

---

**Date:** 6.13.2022 10:12AM

**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

---

**Student:** Sydenstricker, Ingrid  
**Exam #:** 13429  
**Course Title:** Contracts  
**Course ID:** LAW 6102  
**Credits:** 5  
**Term:** Spring 2022 Law Semester  
**Instructor :** Phillips, David  
**Grade:** Pass

---

**Course Description:**

This course examines the legal concepts governing consensual and promissory relationships, with emphasis on the historical development and institutional implementation of contract theory, its relationship and continuing adaptation to the needs and practice of commerce, and its serviceability in a variety of non-commercial contexts. Topics covered include contract formation, the doctrine of consideration, remedies for breach of contracts, modification of contract rights resulting from such factors as fraud, mistake and unforeseen circumstances, and the modern adaptation of contract law to consumer problems. This course also introduces students to the analysis of a complex statute: the Uniform Commercial Code.

---

**Performance Highlights:**

You performed well on the challenging multiple-choice first part of the examination.

Your answers to the three essay problems evinced competent knowledge of the contract law studied in the course.

You also chose to write a short optional paper and selected as your topic feminist perspectives on premarital agreements.

Thank you for your active participation in class.

---

**Date:** 6.2.2022 3:43PM

**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

---

**Student:** Sydenstricker, Ingrid  
**Exam #:** 13429  
**Course Title:** Legal Skills in Social Context  
**Course ID:** LAW 6160  
**Credits:** 2  
**Term:** Spring 2022 Law Semester  
**Instructor :** Mallory, Carol  
**Grade:** High Honors

---

**Course Description:**

The LSSC Social Justice component immediately applies students' legal research and writing skills in using law as a tool for social change. LSSC links students' pre-law school thinking with the new legal culture in which they find themselves. In the first semester, they begin by forging their own team lawyering dynamic in discussing assigned readings and in preparing, and presenting, several advocacy exercises and written assignments. In the second semester, students apply and consolidate their new legal research and writing skills in addressing an intensive real-life social justice project for a selected client organization. LSSC student teams develop their legal and cooperative problem-solving skills and knowledge while producing real client work of a quality that far exceeds the ordinary expectations of first-year law students. May be repeated once.

---

**Performance Highlights:**

As a part of the LSSC course, a group of law students, called a "Law Office" (LO), work together on a year-long social justice project on behalf of a community-based organization. Ingrid was a member of LO10, which worked on a project on behalf of a Chicago non-profit whose mission is to support grassroots organizations and movement building around the abolition of the prison-industrial complex (due to the nature of their work, the organization wishes to remain anonymous.) The focus of LO10's project was on the history of the Chicago Police Department (CPD), the historical efforts to reform it, and why those efforts have failed. The LO researched statutes, city ordinances, police oversight mechanisms, budgets, police unions, prominent political actors, and individual activists and movements for reform. The LO's project culminated in the creation of a website to catalogue their extensive research. The LO presented the results of their research to the community in a presentation entitled "The Past is The Present: The violent anti-Black legacy of policing in Chicago and why abolition is the only path forward."

As a whole, LO10 was the most collaborative, collegial, high functioning, and effective LO I have had the pleasure to work with in the seven years I've been teaching this course. As a group the law office held themselves to an extremely high standard; their performance—individually, in sub-groups, and as a group—was exceptional, and it was evident in their stellar final work product.

Ingrid's performance in this portion of the class was equally strong. Ingrid was an invaluable member of the LO, who made enormous contributions to the success of the project, as well as the class itself. Ingrid was deeply engaged with the social justice issues covered in the course; her reflective essays on these topics were insightful and her contributions to the class discussions pushed her classmates to think about the issues in important ways. Ingrid was similarly thoughtful and reflective in her work on the LO's project; her commitment to the successful completion of the project was evident from the beginning of the class and never wavered. Her ability to think critically and creatively helped to guide the direction of the project in important ways, and she often raised important considerations that her classmates might not have thought of, but which helped to frame the project and ensure its success. Ingrid also did excellent work with her subgroups researching relevant mayoral executive orders as well as examining the role the Chicago Police Department's use of resources has played in the development of Chicago. Where Ingrid most excelled was in her role as one of the presenters for the group's final presentation. With her co-presenters, Ingrid was able to synthesize the enormous amount of research the LO had

compiled, pull out the themes and takeaways from the research, and organize a presentation that was informative, dynamic, and engaging. Ingrid' did an exceptional job with her own portion of the presentation; she demonstrated a natural affinity for public speaking that will serve her well as an advocate.

---

**Date:** 5.31.2022 4:15PM

**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

---

**Student:** Sydenstricker, Ingrid  
**Exam #:** 12912  
**Course Title:** Civil Procedure  
**Course ID:** LAW 6100  
**Credits:** 5  
**Term:** Fall 2021 Law Semester  
**Instructor :** Williams, Lucy  
**Grade:** High Honors

---

**Course Description:**

Introduces students to the procedural rules that courts in the United States use to handle noncriminal disputes. Designed to provide a working knowledge of the Federal Rules of Civil Procedure and typical state rules, along with an introduction to federalism, statutory analysis, advocacy, and methods of dispute resolution. Examines procedure within its historical context.

---

**Performance Highlights:**

- You identified virtually all of the issues.
  - Your analysis reflected a solid understanding of the complex materials covered in the course.
  - You regularly cited to relevant statutes, caselaw and rules.
  - Your discussions of personal jurisdiction, the Erie doctrine as it related to Rule 35, and summary judgment were particularly strong.
  - Your paper was very well written.
- 

**Date:** 1.20.2022 6:33PM

**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

---

**Student:** Sydenstricker, Ingrid  
**Exam #:** 12912  
**Course Title:** Property  
**Course ID:** LAW 6105  
**Credits:** 4  
**Term:** Fall 2021 Law Semester  
**Instructor :** Kelley, Melvin  
**Grade:** Honors

---

**Course Description:**

This course covers the major doctrines in American property law, including trespass, servitudes, estates in land and future interests, landlord-tenant relationships, nuisance, and takings. Students are introduced to rules, policies, and current controversies.

---

**Performance Highlights:**

Demonstrated knowledge of core U.S. Property Law doctrine and associated public policy considerations as well as a capacity to mobilize these insights to assess novel fact patterns.

---

**Date:** 2.24.2022 1:54PM

**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

---

**Student:** Sydenstricker, Ingrid  
**Exam #:** 12912  
**Course Title:** Torts  
**Course ID:** LAW 6106  
**Credits:** 4  
**Term:** Fall 2021 Law Semester  
**Instructor :** Kahn, Jonathan  
**Grade:** Honors

---

**Course Description:**

This course introduces students to theories of liability and the primary doctrines limiting liability, which are studied both doctrinally and in historical and social context. The course includes a brief consideration of civil remedies for intentional harms, but mainly focuses on the problem of accidental injury to persons and property. It also provides an introductory look at alternative systems for controlling risk and allocating the cost of accidents in advanced industrial societies.

---

**Performance Highlights:**

Demonstrated a clear grasp of key tort principles and the contexts in which they apply.

Did a solid job of issue spotting and applying understandings of theories of responsibility and alternatives to evaluate and apply legal rules to specific situations.

Your exam adeptly analyzed legal problems while applying rules to new fact patterns.

---

**Date:** 1.20.2022 6:35PM

## How to Authenticate This Official PDF Transcript

This official PDF transcript has been transmitted electronically to the recipient, and is intended solely for use by that recipient. It is not permissible to replicate this document or forward it to any person or organization other than the identified recipient. Release of this record or disclosure of its contents to any third party without written consent of the record owner is prohibited.

This official transcript has been digitally signed and therefore contains special characteristics. This document will reveal a digital certificate that has been applied to the transcript, and for optimal results, we recommend that this document is viewed with the latest version of Adobe® Acrobat or Adobe® Reader. This digital certificate will appear in a pop-up screen or status bar on the document, display a blue ribbon, and declare that the document was certified by University of Chicago, with a valid certificate issued by GlobalSign CA for Adobe®. This document certification can be validated by clicking on the Signature Properties of the document.



**The Blue Ribbon Symbol:** The blue ribbon is your assurance that the digital certificate is valid, the document is authentic, and the contents of the transcript have not been altered.



**Invalid:** If the transcript does not display a valid certification and signature message, reject this transcript immediately. An invalid digital certificate display means either the digital signature is not authentic, or the document has been altered. The digital signature can also be revoked by the transcript office if there is cause, and digital signatures can expire. A document with an invalid digital signature display should be rejected.



**Author Unknown:** Lastly, one other possible message, Author Unknown, can have two possible meanings: The certificate is a self-signed certificate or has been issued by an unknown or untrusted certificate authority and therefore has not been trusted, or the revocation check could not complete. If you receive this message make sure you are properly connected to the internet. If you have a connection and you still cannot validate the digital certificate on-line, reject this document.

The current version of Adobe® Reader is free of charge, and available for immediate download at <http://www.adobe.com>.

**ABOUT PARCHMENT:** Parchment is an academic credential management company, specializing in delivery of official electronic credentials. As a trusted intermediary, all documents delivered via Parchment are verified and secure.

Learn more about Parchment at [www.parchment.com](http://www.parchment.com)







Name: Ingrid Elisabet Vianna Sydenstricker  
Student ID: 10428057



## Undergraduate

### Degrees Awarded

Degree: Bachelor of Arts  
Confer Date: 06/11/2016  
Degree Honors: With General Honors  
Political Science (B.A.)

### Spring 2014

#### RESUMPTION OF STUDIES APPROVED

Course	Description	Attempted	Earned	Grade
HIST 15801	Intro To The Middle East	100	100	B
HMRT 24701	Human Rights: Alien & Citizen	100	100	A-
PHSC 11000	Sci/Earth: Envir Hist/Earth	100	100	A-
PLSC 28900	Strategy	100	100	C+

### Academic Program History

Program: The College  
Start Quarter: Autumn 2012  
Program Status: Completed Program  
Political Science (B.A.)

### Autumn 2014

Course	Description	Attempted	Earned	Grade
HMRT 29505	Perpetrators, Victims, and Bystanders: Justice after Mass Atrocities	100	100	B+
PHSC 13400	Global Warming	100	100	B+
PLSC 22913	The Practice of Social Science Research	100	100	A
PLSC 26902	Introduction to International Political Economy	100	100	C-

### External Education

Ithaca High School  
Ithaca, New York  
Diploma 2012

### Winter 2015

Course	Description	Attempted	Earned	Grade
ARAB 15017	Advanced Arabic in Morocco	100	100	A
SOSC 19049	Middle Eastern Civilizations, Morocco-1	100	100	A
SOSC 19050	Middle Eastern Civilizations, Morocco-2	100	100	A
SOSC 19051	Middle Eastern Civilizations, Morocco-3	100	100	B

TEST CREDITS APPLIED TOWARD BACHELOR'S DEGREE 400

### Spring 2015

Course	Description	Attempted	Earned	Grade
BIOS 15123	The Microbiome in Human and Environmental Health	100	100	A
PLSC 28500	Zionism and Palestine	100	100	B+
PLSC 28701	Introduction to Political Theory	100	100	B
PLSC 29800	BA Colloquium: Political Sci	100	100	P

### Beginning of Undergraduate Record

### Autumn 2012

Course	Description	Attempted	Earned	Grade
ARAB 10101	Elementary Arabic-1	100	100	A-
CMSC 10500	Fundamentals Of Programming-1	100	100	P
HUMA 14000	Reading Cultures-1	100	100	B-
HUMA 19100	Humanities Writing Seminars	0	0	P
SOSC 15100	Classics Soc/Polit Thought-1	100	100	C-

### Winter 2013

Course	Description	Attempted	Earned	Grade
ARAB 10102	Elementary Arabic-2	100	100	C-
ARTH 14407	Greek Art and Arch II: From the Persian Wars to the Coming of Rome	100	100	A-
HUMA 14100	Reading Cultures-2	100	100	A
HUMA 19100	Humanities Writing Seminars	0	0	P
SOSC 15200	Classics Soc/Polit Thought-2	100	100	B-

### Spring 2013

Course	Description	Attempted	Earned	Grade
ARAB 10103	Elementary Arabic-3	100	100	P
BIOS 12115	Responses of Cardiopulmonary System to Stress	100	100	B-
SOSC 15300	Classics Soc/Polit Thought-3	100	100	B
SPAN 20302	Language, History, and Culture for Heritage Speakers III	100	100	A-

COLLEGE LANGUAGE REQUIREMENT COMPLETED

Honors Awards  
DEANS LIST 2014-15

### Autumn 2015

Course	Description	Attempted	Earned	Grade
AMER 27012	Histories of Violence in the United States	100	100	B+
PHIL 24800	Foucault: History Of Sexuality	100	100	B+
PLSC 27016	Popular Culture, Art, and Autocracy	100	100	A-
PLSC 29000	Intro To International Relations	100	100	A-

### Winter 2016

Course	Description	Attempted	Earned	Grade
PBPL 28150	U.S. Foreign Policy: Inst & Decision making 21st Century	100	100	A
PLSC 22150	Contemporary African American Politics	100	100	B+
PLSC 28901	Introduction to Comparative Politics	100	100	A-

### Spring 2016

Course	Description	Attempted	Earned	Grade
ARTH 18050	What is a Photograph? Hist of Photog, 1834-1965	100	100	A
CMLT 22602	What is a Novel?	100	100	P
FREN 15005	Advanced French in Paris	100	100	A
PHIL 24002	Language and Skepticism	100	100	B



Name: Ingrid Elisabet Vianna Sydenstricker  
Student ID: 10428057



Undergraduate

Honors/Awards  
DEAN'S LIST 2015-16  
Humanitarian Award

Undergraduate Career Totals  
Cumulative GPA: 3.311

Cumulative Totals 3900 3900

End of Undergraduate





June 09, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

In my fifteen years of teaching, I have not encountered a student more obviously suited for a federal clerkship than Ingrid Sydenstricker. Ingrid chose to attend Northeastern University School of Law because our mission aligns with her own commitment to social justice; had she chose instead to attend a top tier law school I have no doubt she would be among the top in her class. She possesses the intellect, intellectual curiosity, skill, work ethic, attention to detail, and commitment to excellence to be an exceptional law clerk; I hope you give her application serious consideration.

Ingrid was a student in my Legal Skills in Social Context (LSSC) course her first year in law school. LSSC is a class unique to Northeastern, and therefore requires a bit of an introduction. LSSC is a year-long required course for all first-year students and has two components. Part of the class is a traditional first-year legal research and writing class; in the other component of the class students work as a group on an intensive year-long social justice project in partnership with a partner organization. Ingrid worked on a project on behalf of a nonprofit in Chicago whose mission is to support activists and organizations engaged in the work of rethinking policing.

In both portions of LSSC Ingrid's performance was outstanding, demonstrating exceptionally strong research skills, a natural affinity for legal analysis, and an excellent ability to communicate both orally and in writing. Ingrid is intellectually curious and a critical thinker, which allows her to comprehend the full range of possible analyses of an issue. Her ability to engage in deep analysis of complex legal issues is on par with the brightest attorneys I have worked with over the years. Ingrid's research skills are similarly strong; she approaches research thoughtfully, and therefore efficiently, and is able to use her strong analytical abilities to identify the relevance of cases that most students would have missed. Finally, Ingrid conveys her analysis effectively both orally and in writing. Her written work was always well-organized, beautifully written, clear, and concise. Given the strength of Ingrid's research and writing skills I have hired her to be a Teaching Assistant for me this fall. It is also no surprise to me whatsoever that Judge Sorokin remarked in Ingrid's co-op evaluation that she was among the top 3 interns he has worked with in over 17 years on the bench.

In addition to the strength of her intellect and skill, Ingrid is a dedicated professional who throws herself into everything she does. This was evident in her work on the project portion of the LSSC class. Her ability to think critically and creatively helped to guide the project in important ways, and her contributions to the final work product were excellent. This included being one of the presenters of the project's culminating community presentation, where she demonstrated exceptionally strong oral communication skills. Most notably, however, it became clear early on that Ingrid is a natural leader. Her strong organizational skills, commitment to producing a quality work product, and the respect and support she showed her classmates, inspired others in the class to do their best work as well.

What is perhaps most remarkable about Ingrid, however, is that her intellect and skill are matched by her personal qualities. She is an incredibly thoughtful person in everything she does, someone who is deeply committed to and passionate about social justice, as well as kind and respectful to all. In short, she is a lovely human being who would be a pleasure to work with. I can't recommend her strongly enough.

If you should have any questions, please feel free to contact me.

Sincerely,

Carol R. Mallory  
Teaching Professor  
c.mallory@northeastern.edu  
617-373-5841

Carol Mallory - c.mallory@northeastern.edu - 6173735841



# Northeastern University

## School of Law

April 18, 2023

ADDRESS

Dear Judge:

I write to lend my most enthusiastic endorsement to Ingrid Sydenstricker in her application to clerk in your court. Ingrid was my student in a seminar on Sexuality, Gender, and the Law in 2022. She was among the most sophisticated thinkers in the class and wrote a paper that so surpassed my general expectations in the course that I encouraged her to submit it for publication. Ingrid comes with my highest recommendation.

Ingrid came to Northeastern University School of Law (NUSL) as a Public Interest Law Scholar (PILS). This full-tuition scholarship is granted only to those students whose academic credentials exceed the norm and who have demonstrated a commitment to pursuing social justice legal work. As an honors graduate and university scholar from the University of Chicago, Ingrid satisfied the former criterion. As to the latter, she was awarded the University of Chicago's Humanitarian Award, participated in the Pozen Summer Human Rights Fellowship, volunteered as a crisis counselor on a suicide hotline, worked as a paralegal for the ACLU of New York, and worked in environmental justice and policy analysis at Cornell University. This is all before she enrolled in law school. She was an ideal fit for the PILS scholarship.

Since her arrival, Ingrid has lived up to the promise that my colleagues in charge of the PILS scholarship saw in her. A review of Ingrid's transcript illustrates her continuing academic success; she has so far earned almost entirely honors and high honors in her classes. Her instructors from every course emphasize her leadership in class discussion, her top-notch research and writing skills, and her doctrinal mastery. In my seminar, Ingrid wrote one of the best papers I have received in fifteen years of teaching the course. She chose to write about an unsettled area of law that required grappling with complex constitutional doctrine: the advisability of establishing sanctuary cities to protect access to abortion. Ingrid not only wrangled the federalism doctrine to the ground, but also managed to perform a sophisticated legal realist analysis attentive to the risks as well as the concrete distributive effects of the full range of legal possibilities. Because her analysis was so sharp and the issue so timely and important, I urged her to develop the paper further into a law review article.

The rubber really hits the road, however, in the evaluation Ingrid received after working as a judicial intern for the Honorable Leo T. Sorokin of the Federal District Court of Massachusetts. She also served (at his invitation) as Judge Sorokin's teaching assistant for a course he teaches at Boston College Law School. Amy Robinson, the judge's permanent law clerk, summarized Ingrid's time in chambers as follows:

Ingrid is a star who ultimately performed more like an extra term law clerk than a student intern. She's one of the top 3 interns I have supervised in my ten years working for Judge Sorokin (plus 3 years working for other federal judges earlier in my career). The judge also places her among the top 3 interns he has encountered during his 17+ years on the bench. She so impressed him that he asked her to continue on a part-time basis to assist him with a restorative justice class he teaches in the spring at Boston College.

Robinson added, "Any employer, including any judge receiving an application from her for a post-graduate term clerkship, would be lucky to hire her." The evaluation goes on in greater detail, but I wish to highlight Ingrid's ability to work independently and incorporate feedback, as well as Robinson's remark that "Ingrid efficiently produced thoughtful, helpful work product showing her understanding of the relevant facts and legal principles. She was one of the most prolific interns we have ever had in our chambers." Ingrid was on an externship with an environmental justice organization, the 80 Acres Law Center, which has not, as of this writing, provided an evaluation, but which nonetheless suggests her continuing commitment to social justice.

Consistent with her ethic of community engagement, Ingrid has participated in various law student organizations, worked as a research assistant to one of my colleagues, and served on the Student Conduct/Title IX Board for the University. She is well-read, and speaks Portuguese, Spanish, French, and beginner Arabic. Her demeanor is generous, confident without a hint of arrogance, thoughtful, and good-humored.

In sum, Ingrid will be a pleasant addition and a working asset in any legal environment. If I can answer any questions, please do not hesitate to reach out to me at the coordinates below.

Sincerely,



Libby Adler  
Professor of Law  
Northeastern University  
[l.adler@northeastern.edu](mailto:l.adler@northeastern.edu)  
617-373-7513

United States District Court

UNITED STATES COURTHOUSE  
1 COURTHOUSE WAY,  
BOSTON, MASSACHUSETTS 02210

LEO T. SOROKIN  
UNITED STATES DISTRICT JUDGE

January 30, 2023

Re: Clerkship Reference Letter for Ingrid Sydenstricker

Dear Judge:

Ingrid Sydenstricker served as a full-time intern in my chambers from September, 2023 to December, 2023. Ingrid was so superb I asked her both (1) to stay on to assist me in completing a complicated Rule 12(c) decision and (2) to serve as my teaching assistant for the class I teach each Spring at Boston College Law School. Never before have I made similar asks of an intern. My reference letter is based on this experience. You should know that there is only one reason I am not hiring Ingrid as my law clerk upon her graduation from law school: my long-standing chambers rule not to hire my interns as law clerks.

When Ingrid arrived in my chambers she was, at best, halfway through her three years of law school. Yet, she quickly produced work on par with my term law clerks. Her legal research was both efficient and comprehensive. Her writing was excellent. She understands legal analysis requires much more than citing a legal rule coupled with an identification of the prevailing party perhaps with the word “thus” added. In her work she explained why the conclusion followed from the rule by persuasively applying the law she researched to the facts (determined under the proper legal standard) confronting the court. Most interns and many law clerks give short shrift to this step in their bench memos or draft opinions. Not Ingrid. The caliber of her early work persuaded me to treat her as if she was a law clerk.

Ingrid performed superbly in a range of matters. She was meticulous in her summary and analysis of the facts even in complicated cases requiring a close read of both various pleadings filed over a period of time and the docket. Her legal research was flawless. Her work encompassed not only the usual social security disability appeal I typically assign to interns, but a thorny nuanced recusal issue which arose in a large civil action pending before me, a motion for sanctions in a civil case arising from alleged trespass by a lawyer’s investigator that implicated the conduct of both the individual case as well as many other admiralty cases, and a complicated set of cross-motions requiring analysis of a state statutory scheme regulating mobile home parks. That case involved analyzing the rent control authority granted to a municipality over a mobile home park, the authority of the Commonwealth’s Attorney General to interpret the state statutory scheme, the application of a binding state supreme court interpretation of one aspect of the state statute and a novel sweeping remedy sought by the plaintiffs. She handled

each of these matters along with her other responsibilities well. Ingrid deserves what I consider the highest praise: when she writes or tells me something I know it is correct and I rely on it without hesitation. I also know Ingrid will bring to me meaningful questions and issues. And, she is the person that earnestly welcomes feedback and successfully incorporates it into her work.

Ingrid is also an excellent professional more in the mold of an experienced lawyer than second year law student. In the course of her internship I was meeting regularly with a team of high powered researchers from Massachusetts General Hospital about a possible joint project. Ingrid regularly communicated on my behalf with these researchers. She did so flawlessly.

Finally, Ingrid is just a lovely warm curious person. She was simply a delight to have in chambers. She has a wide array of interests and talents including that she speaks four languages fluently (English, French, Portuguese, and Spanish), with some language capacity in Arabic. She formed close comfortable relationships with my long time career law clerk, with my two term law clerks and the other intern in chambers. Personally, I very much enjoyed our conversations. She is deeply committed to becoming both an excellent lawyer and one whom dedicates her career to employing her skills on behalf of those in need.

Simply put: You should hire Ingrid. I give her the highest possible recommendation.

Very truly yours,

*Leo T. Sorokin*

Leo T. Sorokin  
United States District Judge



**WRITING SAMPLE**

Ingrid Vianna Sydenstricker  
sydenstricker.i@northeastern.edu  
607-227-7838

The following is a decision resolving cross-motions for judgment on the pleadings regarding rent policies at a manufactured housing development. I drafted the decision in February 2023 as part of my internship with the Hon. Leo T. Sorokin at the U.S. District Court for the District of Massachusetts. While the decision was revised before it was issued, it largely reflects my own work. The decision is shared with Judge Sorokin's permission.

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

EDWIN BARTOK, et al.,

Plaintiffs,

V.

HOMETOWN AMERICA, LLC, et al.,

Defendants.

Civil No. 21-10790-LTS

ORDER ON DEFENDANTS' AND PLAINTIFFS' CROSS-MOTIONS FOR PARTIAL  
JUDGMENT ON THE PLEADINGS (DOC. NOS. 78, 88)

February 27, 2023

SOROKIN, J.

In 2021, plaintiffs Edwin Bartok, Barbara Lee, and the Manufactured Home Federation of Massachusetts, Inc. (“MFM”) commenced this action against Defendants for alleged violations of the Consumer Protection Act and the Manufactured Housing Act. Bartok and Lee are residents at the manufactured housing communities at Miller Woods and Oak Point, respectively, which are owned and operated by Defendants. MFM is a “membership-based, non-profit organization which is dedicated to protecting the rights of manufactured housing residents in Massachusetts.” Doc. No. 11 ¶ 20.<sup>1</sup>

In 2022, Defendants moved for partial judgment on the pleadings as to Counts II and IV of the First Amended Complaint, those pertaining to Oak Point. Doc. No. 78. Plaintiffs then cross-moved for judgment on the pleadings to strike the Fourth, Seventeenth, and Eighteenth

<sup>1</sup> Citations to “Doc. No. \_\_\_” reference documents appearing on the court’s electronic docketing system; pincites are to the page numbers in the ECF header.

Additional Defenses asserted in Defendants' Answer and Defenses to the First Amended Class Action Complaint. Doc. No. 26 at 16, 20; Doc. No. 88. The motions are fully briefed, and the Court heard argument on January 6, 2023. Doc. No. 109.

The Court first addresses Defendants' motion, applying the familiar Rule 12(c) standard in which the Court accepts all facts pled by Plaintiffs as true and draws all reasonable inferences in Plaintiffs' favor. After carefully reviewing the parties' submissions and arguments, the Defendants' Motion for Partial Judgment on the Pleadings (Doc. No. 78) is DENIED. Subsequently, the Court proceeds to Plaintiffs' cross-motion, applying the same legal standard and finding that even when all reasonable inferences are drawn in Defendants' favor, Plaintiffs prevail. Accordingly, Plaintiffs' Cross-Motion for Judgment on the Pleadings (Doc. No. 88) is ALLOWED.

#### I. BACKGROUND

The Manufactured Housing Act ("MHA"), originally passed by the Massachusetts Legislature in 1939, was designed to "protect the rights of residents of mobile home parks." Layes v. RHP Props., Inc., 133 N.E.3d 353, 361 (Mass. App. Ct. 2019). Since then, the Legislature has further developed this regulatory scheme by enacting amendments that provide additional protections, such as those passed in 1973. Blake v. Hometown Am. Cmty., Inc., 158 N.E.3d 18, 27-28 (Mass. 2020). These protections were instituted to preserve the affordability of manufactured housing communities ("MHCs"), particularly for low-income families and the elderly. Id. Such protections include prohibiting no-cause evictions, barring the imposition of unreasonable insurance requirements on residents, and requiring that MHC operators provide residents with notice and relocation costs in the event of the MHC's closure. Id. at 27. In passing the amendments, the Legislature also recognized that creating and preserving the affordability of

MHCs required MHCs to be secure investments such that owners would be able to recoup their costs and get an adequate return on their investments. Id. at 29.

Among their many protections, the amendments include the provision codified at § 32L(2)—central to the present suit—which states: “Any rule or change in rent which does not apply uniformly to all manufactured home residents of a similar class shall create a rebuttable presumption that such rule or change in rent is unfair.” Mass. Gen. Laws ch. 140, § 32L(2). The same section provides that failure to abide by § 32L(2) “shall constitute an unfair or deceptive practice” under Chapter 93A, § 2(a), thus subjecting those in violation to liability. Id. § 32L(7).

Determining the meaning of the MHA is a question of statutory interpretation ultimately left to the courts. Blake, 158 N.E.3d at 26. In interpreting statutes, the Court is guided by the intent of the Legislature as determined by the plain meaning of the statute’s language when considered in the context of the Legislature’s overall goals in enacting the statute. Id.

When considering the MHA, and specifically § 32L(2), the Court does not confront a blank slate. Under Chapter 140, § 32S and Chapter 93A, § 2(c), the Massachusetts Attorney General (“AG”) is empowered to interpret and enforce the MHA, including through adopting regulations. The Court is required to give substantial deference to the AG’s interpretation unless it is found to substantially contradict the plain language of the statute. Blake, 158 N.E.3d at 26. The AG’s interpretation of § 32L(2) is found in the AG’s own regulations, Manufactured Housing Community Regulations (“Regulations”), and the additional guidance found in The Attorney General’s Guide to Manufactured Housing Community Law (2017) (“Guide”).<sup>2</sup> 940 Code Mass. Regs. 10.00–10.14 (1996). The AG also provided further clarification regarding

---

<sup>2</sup> Mass. Att’y Gen.’s Off., *The Attorney General’s Guide to Manufactured Housing Community Law* (2017), available at <https://www.mass.gov/doc/attorney-generals-guide-to-manufactured-housing-nov-2017>.

§ 32L(2) in an amicus letter to the Supreme Judicial Court (“SJC”) in Blake, when the SJC was tasked with providing its own interpretation of the provision. Doc. No. 88-6; see Blake, 158 N.E.3d at 28-29.

The use of the term “similar class” as found in § 32L(2) appears only in the Guide, in which the AG states that “[i]n general, any change in rent must be applied uniformly to all residents of a similar class. A rent increase that is not applied uniformly to residents who receive similar services and have similar lot sizes may be unfair under the [MHA].” Guide at 24. The Regulations, while not referring to “similar classes,” use the term “non-discriminatory rent increases” to refer to “proposed rental increases . . . that are apportioned equally among similarly situated tenants in the community.” See 940 Code Mass. Regs. 10.01, 10.05(4)(c), 10.05(8) (1996). As described in the AG’s amicus letter to the SJC in Blake, the Regulations and the Guide embody the AG’s interpretation of § 32L(2). Doc. No. 88-6 at 3.

In that same letter, the AG explained that a determination of similar classes under § 32L(2) requires a “fact-specific inquiry that principally relates to the nature of the residents’ lots and the services they receive . . . .” Id. While such an inquiry presumes unfairness when similar classes are treated differently in rent—as written into the statute—certain circumstances may warrant the non-uniformity. Id.; Blake, 158 N.E.3d at 29. Such a showing would rebut the presumption; failure to rebut the presumption renders the non-uniform rent structure unfair.

The SJC—the final authority on Massachusetts law—has also recently construed § 32L(2). In Blake, the SJC was confronted with an MHC operator who, upon purchasing the MHC, promptly raised the rent for all new lot rental agreements by ninety-six dollars a month. Blake, 158 N.E.3d at 24. Residents and tenants who had entered into agreements before the change in ownership were not subject to the increase in rent, despite having similar sized lots

with access to similar amenities. Id. In its decision determining whether the non-uniform rents constituted a violation of § 32L(2), the SJC provided several key holdings:

[W]e reject the owners' argument that time of entry into a lot rental agreement renders the renters dissimilar under the statute.

\* \* \*

The defendants argue that the timing of entry into lot rental agreements renders the plaintiffs not in a “similar class” under the statute, even if the lots rented are essentially the same with the same amenities. This contention is incorrect.

\* \* \*

Charging different amounts of rent for essentially the same lot appears to violate the uniformity presumption presented by the plain language of the statute. Although different lot sizes or amenities would clearly divide the residents into different classes, time of rental does not appear to defeat the uniformity principle contained within the statute. If every time a lot turned over, a different class were created, there would be no uniformity whatsoever.

\* \* \*

Section 32L (2) clearly states this concern [of maintaining manufactured housing communities as affordable housing options] by creating a presumption that nonuniform rents for similar classes of residents are unfair.

\* \* \*

In sum, the language and legislative history of § 32L (2) provide for a presumption of uniform treatment and protection of the low income residents of manufactured housing communities, new and old. Nowhere does the text or legislative history of the statute indicate that a turnover in a lot lease would create a new class of resident and subject that new resident to paying more rent than others for the same lot. If every such change created a new class of resident, and allowed unrestricted rent increases, there would be no uniformity and no protection.

\* \* \*

In light of the text of the statute as a whole, the Attorney General's guidance, and the legislative history, we hold that time of entry into an occupancy agreement does not create a dissimilar class under § 32L (2). Such an interpretation would allow a manufactured housing community operator to completely circumvent § 32L (2) by

creating a new class each time a new lease is signed, and remove the protections that the statute offers against unfair and nonuniform changes in rent.

\* \* \*

Because the defendants have violated G. L. c. 140, § 32L (2), damages are governed by G. L. c. 93A.

Id. at 24, 26-29, 33. The SJC also held that the AG’s interpretation as set forth in the amicus letter was “consistent with [their] interpretation of § 32L(2).” Id. at 29. The SJC’s interpretation of § 32L(2) in Blake opened the door to actions such as this one. In at least partial response to Blake, Plaintiffs sued the owners and operators of the Oak Point Manufactured Housing Community in Middleborough, Massachusetts alleging that the Oak Point rent structure—a non-uniform structure—was unlawful. See Doc. No. 11.

As described by Plaintiffs, the Oak Point rent structure sets rent “based on a resident’s or tenant’s date of entry into the community,” such that new entrants are charged higher rents even when they are “leasing home sites and receiving services similar to the home sites leased or services received by existing residents or tenants.” Doc. No. 11 ¶¶ 31-32. The leases are for lifetime occupancy with the only annual rent increases based on the annual percentage change in the consumer price index. See Doc. No. 29-1 at 6-15.

According to Plaintiffs, this rent structure has produced dissimilar rents for similar classes of Oak Point tenants in violation of Chapter 93A, § 9 and Chapter 140, § 32L(2). Doc. No. 11 ¶¶ 118-24, 132-38. Defendants assert that they are not subject to liability because Chapter 93A, § 3 exempts “actions otherwise permitted under laws as administered by any regulatory board or officer acting under statutory authority of the commonwealth.” See Doc. No. 78. Defendants argue that the exemption applies to the Oak Point rent structure because the rent structure has been permitted by the Middleborough Rent Control Board (“the Board”). Id.

The Board was established by the Massachusetts Legislature through the Special Act of 1985, which was enacted to address the “emergency . . . created by high and unwarranted rental increases imposed by some park owners of mobile home parks.” Doc. No. 78-2 at 1. Such increases were deemed a risk to the “public safety, health and general welfare of the citizens of [Middleborough], particularly the elderly.” Id. Under Section 2 of the Special Act, the Legislature authorized the creation of a Middleborough rent board to regulate “rents, standards and evictions” of mobile home park accommodations to “remove hardships, or correct inequities for both the owner and the tenants.” Id. at 1-2. When regulating rent, Section 3 authorized the Board to consider the need to guarantee a fair net operating income for mobile home park owners, including how changes to property taxes, maintenance expenses, and other conditions may impact owners. Id. at 2. The Special Act of 1985 made no mention of either Chapter 140 or any authority of the Board to enforce or interpret its provisions. Id. at 1-3.

The Board first confronted the issue of Oak Point’s rent structure in 1998 when Saxon Partners, the developer and initial owner of Oak Point, submitted a rent proposal to the Town regarding the then-planned Oak Point MHC. Doc. No. 88-9 at 13; see Doc. No. 89 at 2. The proposal described the rent structure still in place at Oak Point today—lifetime leases in which the base rent is set at the time of the tenant’s arrival to Oak Point and the only permitted increases are annual adjustments based on changes to the consumer price index. Doc. No. 78-1 at 11-12. Over the course of several meetings that year, the Board discussed the Oak Point rent structure, but ultimately decided not to vote on the proposal nor take any formal action. Id. at 8-12, 26-28. At the same time, the Board made no effort to adjust the proposal nor prevent its implementation. Id. at 26-28. Without restrictions imposed by the Board, Saxon Partners implemented the proposed rent structure at Oak Point.



In 2009, the issue of Oak Point’s rent structure again came before the Board. Id. at 54. The rent structure was raised during the Board’s drafting and ultimate passage of the Rules and Regulations for Mobile Home Park Accommodations, Rent, and Evictions (“the Middleborough Rules”), which explicitly set forth maximum rent requirements under Section 2, “Maximum Rent.” Id. at 70-80. Section 2 states that the maximum rent for a new manufactured home may “be higher or lower than the maximum rent for other mobile homes in the park when the rental housing agreement is made.” Id. at 72-73. For manufactured homes which were previously owned, the maximum rent—established by a new agreement—shall not exceed either (1) the rent being offered to purchasers of new manufactured homes (in cases where the MHC owner is selling new manufactured homes at that time) or (2) the highest rent being paid by other tenants (in cases where the MHC owner is not selling new manufactured homes at the time). Id. Once the annual base rent has been established, further increases must be approved by the Board or based on the annual change in the consumer price index as approved by the Board or as provided in the rental agreement. Id. at 73. The governing rules in place today, most recently amended in 2013, retain the original language of Section 2. Id. at 131-32; Doc. No. 79 at 17.

In 2011, Defendants purchased Oak Point and continued to implement the original rent structure put in place by Saxon Partners, the same structure currently challenged by Plaintiffs. Doc. No. 11 ¶¶ 30-32. The Oak Point rent structure was, and continues to be, compliant with Section 2 of the Middleborough Rules. The heart of the present dispute is whether compliance with the Middleborough Rules entitles Defendants to an exemption under Chapter 93A, § 3. Defendants argue that they are exempt under § 3 because the Middleborough Rules “permit” the Oak Point rent structure within the meaning of that statute. See Doc. No. 79. In opposition, Plaintiffs assert that regardless of whether Oak Point’s rent structure is compliant with the

Middleborough Rules, the Board lacked the authority to permit the structure in the first place and, accordingly, Defendants have no right to the § 3 exemption. See Doc. No. 89.

## II. DISCUSSION<sup>3</sup>

The parties agree that if Defendants are entitled to the § 3 exemption, Claims II and IV of the First Amended Complaint must be dismissed. Alternatively, if Defendants are not entitled to the exemption, Defendants' motion must be denied; Defendants' Fourth, Seventeenth, and Eighteenth Affirmative Defenses must be struck; and the Court would later determine whether, under § 32L(2), Defendants are in fact charging dissimilar rents for similar classes of tenants without sufficient justification. As explained in the discussion that follows, the Court finds that the exemption does not apply because the Oak Point rent structure is not "permitted" within the meaning of Chapter 93A, § 3. At present, the Court takes no position on the ultimate § 32L(2) merits dispute. Several reasons support the conclusion that the exemption does not apply.

First, Defendants have failed to show more than a related or overlapping regulatory scheme. As such, they do not meet their "heavy" burden of proving the § 3 exemption applies. Aspinall v. Philip Morris, Inc., 902 N.E.2d 421, 424 (Mass. 2009). Courts are not to apply the exemption lightly. Ducat v. Ethicon, Inc., No. 4:21-CV-10174-TSH, 2021 WL 5749856, at \*1 (D. Mass. June 4, 2021). To meet their burden, Defendants must show "more than the mere existence of a related or even overlapping regulatory scheme that covers the transaction. Rather, [Defendants] must show that such scheme affirmatively permits the practice which is alleged to be unfair or deceptive." Aspinall, 902 N.E.2d at 424 (emphasis in original, citations omitted). That permission must come from a "regulator authorized to review the defendant's actions" who,

---

<sup>3</sup> The Court acknowledges that there are differences in meaning between "tenants" and "residents." Those differences do not bear upon this decision. The Court has adopted the term "tenants" where applicable for the sake of simplicity.

in turn, has “determined that those actions, in particular, were not unfair or deceptive.” O’Hara v. Diageo-Guinness, USA, Inc., 306 F. Supp. 3d 441, 454 (D. Mass. 2018), on reconsideration, 370 F. Supp. 3d 204 (D. Mass. 2019).

While it is true that the Oak Point rent structure complies with the Middleborough Rules and that the Board was well-aware of the Oak Point structure by the time the rules were passed, those rules express no binding determination over whether Defendants are separately compliant with § 32L(2). The Special Act of 1985, which established the Board, does not explicitly or impliedly authorize the Board to determine what is sufficient to rebut the presumption of unfairness under § 32L(2). Similarly, that law vests no authority in the Board to interpret, apply, or enforce § 32L(2) or any other provision of Chapter 140. Certainly, the Legislature did authorize the Board to regulate rents in ways that consider both tenant rights and the financial needs of operators, and the SJC has instructed rent control boards to “be mindful” of § 32L(2). Chelmsford Trailer Park, Inc. v. Town of Chelmsford, 469 N.E.2d 1259, 1264 (Mass. 1984). Nonetheless, that existing authorization and instruction decidedly fall short of authorizing the Board to determine whether classes of tenants are “similar” within the meaning of § 32L(2) or whether non-uniform rents are justifiable under § 32L(2). That fact-specific inquiry is not something the Board is authorized to do. Thus, the Board’s regulations do not (and could not) “permit” the rent structure at Oak Point within the meaning of Chapter 93A, § 3. Rather, the Board is administering a related or overlapping rent control scheme through its regulations. Such a showing is insufficient to meet Defendants’ heavy burden and, therefore, the exemption does not apply.<sup>4</sup>

---

<sup>4</sup> Moreover, the AG’s regulations do not “expressly proclaim[]” that rent increases authorized by rent control laws are “permitted,” as Defendants argue. Doc. No. 95 at 12-13. The principles of statutory interpretation require that the regulations be construed according to their plain

Second, § 32L(2) plainly creates substantive rights for tenants of manufactured housing communities that cannot be impaired by local governments. As previously described, § 32L(2) was added to the MHA as part of a package designed to protect the rights of tenants. The need for such rights was rooted in the Legislature’s understanding that those tenants—often of fixed- or low-income status, such as the elderly or single parents—were vulnerable. Blake, 158 N.E.3d at 27-28. The Legislature sought to address these concerns by establishing a specific right with an associated cause of action. See Mass. Gen. Laws ch. 140, § 32L(7).

The text of § 32L(2) creates a legal standard against which non-uniform rent structures are to be measured. Under subsection two, a change in rent which does not apply uniformly to all “manufactured home residents of a similar class” is presumptively “unfair.” Id. § 32L(2). Subsection six goes on to provide that “[a]ny rule . . . which is unfair or deceptive or which does not conform to the requirements of this section shall be unenforceable.” Id. § 32L(6). Subsection seven endows plaintiffs with the ability to vindicate those rights by stating that “[f]ailure to comply with the provisions of sections thirty-two A to thirty-two S, inclusive, shall constitute an unfair or deceptive practice under the provisions of [Chapter 93A, § 2(a)]. Enforcement of

---

language. Mass. Fine Wines & Spirits, LLC v. Alcoholic Beverages Control Comm’n, 126 N.E.3d 970, 975 (Mass. 2019). Here, Defendants misread the plain language of the applicable regulation, 940 Code Mass. Regs. 10.02. As relevant to this case, subsections two and seven of 10.02 set forth, respectively, that MHC operators must abide by § 32L(2) and that MHC rent increases must be allowed by rent control laws where they exist. Subsection eight, which Defendants take out of context, only applies to a subset of rent increases and only concerns when such increases are “unfair.” This regulation does not encompass let alone “permit” rent increases which violate § 32L(2). Indeed, following Defendants’ interpretation of the regulations would result in a municipal rent control law rendering any rent increase “permitted” despite the express provisions of the governing statute and the regulations. Such an outcome would contradict the well-established direction that courts not construe statutes in ways that reach “absurd” results when sensible construction is available. Commonwealth v. Tinsley, 167 N.E.3d 861, 869 (Mass. 2021).